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NO. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,
Petitioners-Plaintiffs,

vs.

78-57 81-5784
RICHARD NELSON,

And

79-40 81-5785

PEOPLES LIBERTY BANK; CARSON FURNITURE; GEORGE
WERMELING; RALPH HAILE; JUDY GUFFEY; RICHARD
NELSON; RICHARD SLUKICH; THOMAS A. EPPERSON;
JAMES TUCKER; TODD A. FINAN; JAMES LILES; BERNARD
SMITH; HENRY WARDEN; UNNAMED POLICE OFFICERS;
UNNAMED EMPLOYEES OF CARSON FURNITURE

And

78-70 81-5786

RICHARD SLUKICH; PEOPLES LIBERTY BANK;
RALPH HAILE; RICHARD NELSON,
Respondents-Defendants.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDDIE THOMPSON, JR.,
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

PATRICIA THOMPSON,
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

QUESTIONS PRESENTED

1. Did the trial court commit reversible error when it tried police officers on the wrong theory, and when it excluded parties, who admitted they hired one of the police officers in alleged wrongful beating of Plaintiff?
2. Is a party bound to what he stipulates?
3. Does a complaint which alleges that Defendants hired police officers and others to deprive Plaintiffs of liberty and property, without due process or equal protection of the law, state a cause of action?
4. Were Defendants entitled to Summary Judgment, where Defendants controverted none of the facts in the complaints or alternately, were facts established by Plaintiffs, where Plaintiffs filed Motion and Affidavit for Summary Judgment and Defendants neglected to file counter affidavits?
5. Is a former judgment conclusive of the matters in issue?
6. Was award of attorney fees to Defendants clearly erroneous?

III.

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IX.

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

Petitioners-Plaintiffs,

vs.

78-57 81-5784

RICHARD NELSON,

And

79-40 81-5785

PEOPLES LIBERTY BANK; CARSON FURNITURE; GEORGE
WERMELING; RALPH HAILE; JUDY GUFFEY; RICHARD
NELSON; RICHARD SLUKICH; THOMAS A. EPPERSON;
JAMES TUCKER; TODD A. FINAN; JAMES LILES; BERNARD
SMITH; HENRY WARDEN; UNNAMED POLICE OFFICERS;
UNNAMED EMPLOYEES OF CARSON FURNITURE

And

78-70 81-5786

RICHARD SLUKICH; PEOPLES LIBERTY BANK;
RALPH HAILE; RICHARD NELSON,

Respondents-Defendants.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AFFIDAVIT

Comes now Petitioner, Eddie Thompson, Jr., first being duly cautioned and sworn and states as follows:

1. That a jury in Kenton District Court did render a verdict against me for alleged DUI.
2. That a jury in Kenton District Court did render a verdict against me for alleged criminal trespass at my home.
3. That I timely appealed both convictions to the Kenton Circuit Court.
4. That the Kenton Circuit Court dismissed both cases.
5. That neither case was ever remanded back to the Kenton District Court.
6. That even though I had won these cases, Mr. Nelson and/or Mr. Slukich had a Kenton District Deputy Clerk to issue summons for me to appear in Kenton District Court.
7. That the first time I appeared in court, the Judge instructed the clerk not to call these cases again, unless they were remanded back to the District Court by the Circuit Court.
8. That after the Federal Court ordered the pre-trial set [(June 30, 1980) 79-40, NR 18 Ex. N, this App. P. 26a], Mr. Nelson and/or Mr. Slukich caused a criminal summons to be issued against me demanding fines I did not owe.
9. That at the pre-trial conference, Mr. Nelson acknowledged he was aware of the summons. Pre-Trial Trans. 93, 81-5784, App. P. 184.
10. That I paid the fine, because I knew Judge Douglas Stephens (sitting judge that day) would have me illegally jailed by having a Deputy Clerk sign an "Order of Commitment."

XI.

11. That Judge Stephens would not sign any order, thus, I would not be able to appeal.
12. That Judge Stephens had had clerks to sign an "Order of Commitment" in the past when I was scheduled to appear in Federal Court. SEE: 78-70 NR 5.
13. That as of today, neither I nor Patricia have received the \$5,952.60 equity payment ordered paid to us in the alleged foreclosure sale.

/s/ EDDIE THOMPSON JR.
Eddie Thompson, Jr.

Subscribed and sworn to before me this 13th day of June 1983.
(SEAL)

/s/ ISIAH SMITH
Notary

My commission Expires:
1/18/84

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Petitioners-Plaintiffs,

vs.

78-57-81-5784

RICHARD NELSON,

And

79-40 81-5785

PEOPLES LIBERTY BANK; CARSON FURNITURE; GEORGE
WERMELING; RALPH HAILE; JUDY GUFFEY; RICHARD
NELSON; RICHARD SLUKICH; THOMAS A. EPPERSON;
JAMES TUCKER; TODD A. FINAN; JAMES LILES; BERNARD
SMITH; HENRY WARDEN; UNNAMED POLICE OFFICERS;
UNNAMED EMPLOYEES OF CARSON FURNITURE

And

78-70 81-5786

RICHARD SLUKICH; PEOPLES LIBERTY BANK;
RALPH HAILE; RICHARD NELSON,

Respondents-Defendants.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Petitioners, Patricia and Eddie Thompson, Jr., respectfully
pray that a Writ of Certiorari issue to review the Judgment

and/or Order (Unpublished Decision) of the United States Court of Appeals for the Sixth Circuit, entered in the above styled case on March 10, 1983.

OPINION BELOW

The Orders of the Court of Appeals are annexed to this Petition as Exhibit A, this App. P. 1a. The Order denying Petition for Rehearing as annexed as Exhibit B, this App. P. 4a. The Mandate issued on May 12, 1983, Exhibit A, this App. P. 1a.

The orders and Judgments of the District Court are annexed as:

(78-57)

Exhibit C, D, H, K, L, — This App. Pp. 6a, 9a, 13a, 19a, 23a. 78-57, NR 14, 15, 19, 20, 21; 81-5784 App. p. 48, 50, 75, 77, 80

(78-70)

Exhibit C, E, I, K, M, — this App. Pp. 6a, 10a, 15a, 19a, 24a. 78-70, NR, 61, 62, 67, 68, 69; 81-5786 App. P. 115, 117, 148, 150, 153

(79-40)

Exhibit C, F, G, J, K, — this App. Pp. 6a, 11a, 12a, 16a, 19a. 79-40 NR 55, 56, 57, 63, 64; 81-5785 App. P. 176, 178, 179, 208, 210

JURISDICTION

The Order and/or Judgment of the Court of Appeals is annexed to this Petition as Appendix A, this Appendix page 1a. A timely-filed Petition for Rehearing was denied on May 4, 1983; Appendix B, this Appendix Page 4a. This Petition for Certiorari was filed within sixty (60) days of the Petition for Rehearing having been denied.

The Court's jurisdiction is invoked pursuant to 28 U.S.C.A. 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the U. S. Constitution provides — The right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the U.S. Constitution provides in pertinent part that, "No persons shall be . . . ; nor be deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation.

Pertinent parts of the Fourteenth Amendment provide that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1983 provides, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

42 U.S.C. 1985(3) provides in pertinent part that, "If *two or more persons* in any state or territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or indirectly, any person or class of persons of equal protection of the law, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authority of any state or territory from giving or securing all persons

within such state or territory the equal protection of the laws; . . . in any such case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

K.R.S. 426.525 in pertinent part provides that, "Foreclosure of a mortgage is forbidden; provided, however, that this section shall not preclude a mortgagee after default from taking possession of property subject to the mortgage which has been abandoned by the mortgagor, for the purpose of preserving and maintaining the same, harvesting crops, or letting the same all to the account of the mortgagor; and any reasonable expenses incident thereto including taxes and insurance shall be added to the principal of the mortgage, and secured by it, for purpose of this section, property shall be deemed to have been abandoned when the mortgagor has moved from the property and when by the nature of the property in question when further neglect or failure to attend will decrease its value.

KRS 186.565 in pertinent part provides — Section (1):

Any person who operates a motor vehicle in this state is deemed to have given his consent to a chemical test of his blood, breath, urine or saliva for the purpose of determining the alcoholic content of his blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle in this state while under the influence of intoxicating beverages. The test shall be administered at the direction of law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle in this state while under the influence of intoxicating beverages.

The law enforcement agency by which the officer is employed shall designate which of the aforesaid tests shall be administered, and provide necessary equipment.

Section (3) — If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in subsection (1) of this section, the requesting officer shall warn the person of the effect of his refusal to submit to the test. If the person again refuses, none shall be given, but the department of transportation, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle in this state while under the influence of intoxicating beverages, that the person refused to submit to the test upon the request of the law enforcement officer, and that the person again refused to submit to the test after the law enforcement officer warned him of the effect of his refusal, the department shall immediately serve notice to the person by certified mail to the last known residence address of the person or if the address is unknown, the last known business address of the person to appear before the secretary or his duly authorized agent and show cause why his license to operate a motor vehicle, or if said person is a non-resident his privilege to operate a motor vehicle within this state should not be revoked; or if the person is a resident without a license or permit to operate a motor vehicle in this state why that person should not be denied the issuance of a license or permit. The hearing shall be scheduled as early as practical but not sooner than ten (10) days after issuance of the notice and at a time and place designated by the secretary.

K.R.S. 189.520 in pertinent part provides — *Section (2)* — No person shall operate a motor vehicle anywhere in this state while under the influence of intoxicating beverage or drug which may impair one's driving ability. *Section (6)* — No person may be compelled to submit to any test specified in subsection (4) of this section, but his refusal to submit to such

test shall result in revocation of his license as provided in K.R.S. 186.565(3).

STATEMENT

The instant actions seek redress from Defendants who conspired to invade private premises and to deprive Plaintiff of real and personal properties, without due process of law.

This scenario began in 1975, when Petitioner (Eddie), a Negro, contested a city primary election. Compl. 78-57 NR 1, 78-70 NR 1, 79-40 NR 1.

The Kentucky Court of Appeals ruled, "There is no statutory authority for contest of a primary election for commissioner of a city of the second class with city-manager form of government." *Thompson v. Kenton County Board of Elections* 523 S.W. 2d 68 Cert. denied January 26, 1976, 96 S.Ct 873.

As a result of Petitioner (Eddie) contesting the election, Peoples Liberty Bank and its attorney, Mr. Richard Nelson, filed an alleged illegal foreclosure on Petitioner's home and other properties Petitioners had an interest in, in violation of K.R.S. 426.525.

Immediately following the foreclosure proceeding, September 14, 1977, the Bank filed a Forcible detainer action to gain possession of Petitioners' home. Subsequently, the Bank moved to dismiss their Forcible detainer action with prejudice. *Kenton Circuit Court #33430*. [The quarterback, Mr. Nelson admitted at pre-trial, "Counsel for the Bank became concerned because in my research, a forcible detainer action is a possessory action questioning the right to possession. Mr. Thompson had alleged that he was the lawful owner of the property where title may be questioned."] Pre-Trial Trans. Pg. 81, 81-5784 App. P. 171.

The Motion was granted and affirmed by the Kentucky Court of Appeals, No. 79-CA-1456 MR. The Kentucky Court of Appeals in affirming said, "... It is the Bank, not the Thompsons, as they perceive, who are prejudiced with respect to the proceeding. ... Since we have no jurisdiction over federal

courts, we will not comment on the issue raised pertaining thereto." Cert. denied *Thompson v. Peoples Liberty* 80-1358. Ex. P, this App. P. 29a, 79-40 NR 37, List of Exhibits # 28, 81-5785 App. P. 130.

After efforts to gain possession of Petitioners home had failed and on or about the 3rd day of April 1978, Mr. Nelson wrote Petitioners a letter advising, "... We can proceed ... and have a moving company just move you out of the house while my client takes possession ... If I do not hear from you in writing within 10 days ... We intend to proceed without further notice, as such is not required." Mr. Nelson admitted the letter at the pre-trial conference. Pre-trial Trans. P. 86, 87, - 81-5784 App. P. 176, 177.

On April 12, 1978, the Bank had a judge to sign an order and writ of possession, without notice or hearing to Petitioners. 79-40 NR 37, List of Exhibits # 16, 81-5785 App. P. 130.

On April 15, 1978, 3 Covington police officers beat Petitioner (Eddie) and brought false criminal charges against him (Eddie).

One of the police officers (T. Finan) threatened to put Petitioner (Eddie) in the river. Mr. Nelson and the Bank admitted they hired at least 7 police officers, including T. Finan. Interrogatories (Police Officer Smith), 79-40 NR-25, 81-5785, App. P. 83.

On July 19, 1978, without notice or hearing, the Bank had the Sheriff to execute the April 12, 1978 Writ and Order of Possession, while Petitioners were at work, by setting Petitioners' possessions upon the street. Compl. 79-40 NR 1.

On July 19, 1978, Police Officers James Liles and Bernard Smith produced a lease agreement between police officers and the Bank, whereby the police officers were to pay the Bank \$200 a month rent in advance on the 5th day of each month. 79-40, List of Exhibits # 12, 81-5785 App. P. 123.

The Bank and Mr. Nelson admit paying officers Liles and Smith \$5-an-hour. Pre-trial Trans. 88, 90, 81-5784 App P. 128, - 79-40, NR 25 - 81-5785 App. P. 83.

Armed police officers hired by the Bank occupied the Petitioners' home on a 24-hour-a-day basis (presenting an imminent threat to the lives and liberty of Petitioners) from July 19, 1978 to July 27, 1978, when friends of Petitioners (Thompsons) presented a petition to the Mayor and City Commissioners, demanding to know why police officers were occupying the Thompsons' home. Compl. 79-40 NR 1 - 81-5785 App. P. 12.

The Thompsons camped in a neighbors yard until police officers left on July 27, 1978, then moved back into their (Thompsons) home.

On July 29, 1978, Mr. Richard Slukich came to the Thompsons home, claiming he owned it (home), and had Petitioner (Eddie) arrested and charged with criminal trespass and burglary in the first degree. The warrant was not signed by any judge. Amended Compl. 78-70, NR 38 - 81-5786 App. P. 63.

Petitioners (Thompsons) were not allowed to file any complaint, concerning their home, in State court.

Petitioners (Thompsons) filed suit in Federal court (78-70, 81-5786) seeking to prevent Mr. Slukich from aiding the Bank, Mr. Nelson, and police officers hired by the Bank from wrongfully taking possession of Petitioners' home.

Attorneys Mr. Nelson and Mr. Slukich had Petitioner (Eddie) jailed without bond, so Petitioners could not initially pursue 78-70 in Federal court.

Petitioner (Eddie) had to petition the Federal court for habeas corpus to attend a hearing on a Motion for a temporary restraining order. 78-70 NR 6, 81-5786, App. P. 23.

Police officers hired by the bank prevented the Thompsons from entering their (Thompsons) home after July 29, 1978. The Thompsons' home was now locked, and the Thompsons were the only ones with a key to their (Petitioners) home.

To gain entrance to Petitioners' (Thompsons) home, subsequent to July 29, 1978, the Bank, Mr. Nelson and/or Mr. Slukich hired persons unknown to Petitioners (Thompsons) to break into Petitioners' home and change the locks on the

doors, while police officers paid by the Bank stood watch. Petitioner (Eddie) took pictures of the men breaking and entering into Petitioners' home. 79-40, NR 1, 81-5785 App. P. 13.

At a later date, the Bank, Mr. Nelson, and/or Mr. Slukich had all of Petitioners' personal possessions stolen from Petitioners' home. Some of these possessions ended up at Carson Furniture. Compl. 79-40 NR 1.

The Bank allegedly bought Petitioners' home at its (Bank) foreclosure sale for \$14,500. At the time of the alleged sale Mr. Nelson let it be known that Petitioner (Eddie) would be arrested on false criminal charges (list of Exhibits Ex. 21, 79-40 NR 37, 81-5185 App. P. 128) brought by a police officer, if he (Eddie) appeared at the alleged sale.

The Bank retained the \$5,952.60 equity ordered paid to Petitioner. Pre-Trial Trans. P. 79. SEE affidavit of Petitioner (Eddie) Ex. Q, this Pet. P. ix.

While Mr. Slukich was maintaining criminal charges against Petitioner (Eddie) the Bank allegedly made a sale of Petitioners' home (a sale that did not involve Mr. Slukich) to a family on welfare for \$48,500.

A pre-trial conference was held on June 27, 1980. In the pre-trial order, the court ordered the parties, inter alia, to:

- (1) Meet with each other to exchange list of witnesses . . . and a summary of expected testimony.
- (2) Complete all discovery
- (3) Display . . . Exhibits, whether admissible as Exhibits or not.
- (4) Enter into a written stipulation — 78-57 NR 10 81-5874 App. P. 19; 78-70 NR 49 81-5786 App. P. 73; 79-40 NR 18 81-5785 App. P. 62.

[We may note: All Defendants' counsel wilfully refused to obey the pre-trial order. At the trial of Epperson, Finan, and Tucker — when the court asked Mr. McMurtry why he

(McMurtry) did not comply with the pre-trial order, Mr. McMurtry replied, "Your Honor, there was no pre-trial conference, mainly because the other Defendants in the case said, 'They felt it would be fruitless to enter into any pre-trial negotiations with the Plaintiffs'." 79-40 Trial Transcript Pg. 10 – 81-5785 App. P. 230. Mr. McMurtry was aware that the DUI charges were dismissed. Trial Transcript P. 58 – 81-5784, App. P. 278.

At the pre-trial conference all three cases were consolidated. 79-40 NR 43 – 81-5785 App. P. 152.

Mr. Haile and Mr. Nelson wilfully refused to answer interrogatories. 79-40 NR 19, 20 – 81-5785 App. P. 66, 68.

In its pre-trial order, 79-40, NR 43 – 81-5785 App. P. 91, even though the Bank and Mr. Nelson admitted hiring at least 7 police officers [including T. Finan who participated in the beating of Petitioner (Eddie)], the Court considered the beating of Petitioner (Eddie) by 3 police officers on April 15, 1983 as "use of excessive force against plaintiff in the course of an arrest."

Petitioner's (Plaintiff) claim was that Mr. Nelson and the Bank had hired these police officers to take care of (beat) Petitioner (Eddie). Amendment of Pleading 78-57 NR 5, 81-5784 App. P. 11 – 79-40 NR 1, 81-5785 App. P. 11.

The Court considered Defendants Motions to dismiss, with regards to all other claims as supplemented by court records ordered to be filed at pre-trial conference as Motion for Summary Judgment.

At the pre-trial conference:

Mr. Nelson was ordered to file the certified record from the State court as to the foreclosure at 736 Highland Avenue (Petitioners' home) Order 79-40 NR 43 – 81-5785 App. P. 152, Ex. N, this App. P. 22a, Pre-trial Trans. 40, 103, 116; 81-5784, App. P. 130, 193, 206.

The certified record in 33430 (79-CA-1456 MR) was not made available to the Court and Mr. Nelson's Affidavit, which he (Nelson) did not serve upon Plaintiffs, was fraudulently intended. 79-40 NR 42 – 81-5785 App. P. 151, Ex. O, this App.

P 28a. Mr. Nelson made no mention of case No. 31503 which was the original foreclosure. The record in that case has been botched.

Counsel for Defendant Slukich was ordered to make the warrant and Complaint of State court criminal trespass case referred to at the pre-trial conference a part of the record herein.

Counsel for Defendant Slukich did not make the warrant and complaint a part of this record. The certified copy of the warrant presented was fraudulently intended. No judge signed the original warrant.

At the trial, Mr. McMurtry knew that the charge of DUI had been dismissed by the Circuit Court and his response to Motion (79-40 NR 58 – 81-5785 App. P. 180) was fraudulently intended when he (McMurtry) said, "After Thompson's Appellate efforts end, one suspects his license will be revoked."

REASON FOR GRANTING WRIT

At the threshold, we are confronted with 2 questions:

1. Whether Petitioners (Plaintiffs) complaints alleged that, "Police Officers Epperson, Finan, and Tucker had allegedly used excessive force against Plaintiff in the course of an arrest occurring on April 15, 1978. Pre-trial Order 79-40 NR 57, 81-5785, App. P. 91, 92 Exhibit N, this App. P. 22a

or

2. Whether Petitioners (Plaintiffs) alleged that on or about April 15, 1978, Mr. Nelson had conspired to cause certain policemen to beat Petitioner (Eddie) for no just cause. Amendment of Pleadings as of Course, 78-57 NR, 81-5784 P. 11, and in 79-40 NR 1, 81-5785 App. P. 9, 10, 11, Petitioners (Plaintiffs) by verified complaint, alleged, inter alia, (15)

that Mr. Nelson intended to use police officers to execute a writ of possession dated April 12, 1978; (36) that Epperson, Finan, and Tucker kicked and beat Eddie Thompson, Jr. nearly unconscious; (45) that Richard Nelson engaged these police officers to beat Eddie Thompson, Jr.

The latter question as stated in the complaint is denied by no one in this case.

The court consolidated these cases. Thus, allegation of pleadings in one action are treated as admission in other action. *IN RE Double D Dredging Co.* 467 F 2d 468 5th Cir.

The District Court separated the beating incident allegedly caused on April 15, 1978, by the Bank and Mr. Nelson.

An order pursuant to F. R. Civ. P. 42 separating issues for trial is an unappealable interlocutory order. *Helena Curtis Industries v. Church and Dwight* 560 F.2d 1325 7th Cir.

The Bank and Mr. Nelson were indispensable parties to any trial of the beating incident.

We have a case here where everyone agrees that Petitioner (Eddie) was beaten by Epperson, Finan, and Tucker.

No one seems to be able to explain how 2 of the 3 police officers arrived at the scene without being dispatched by the dispatcher. No one, including the dispatcher, heard Epperson make a call to Finan or Tucker.

Officer Epperson claims that Petitioner (Eddie) kicked him in the groin. Need we speculate on what would have happened to anyone who kicked a policeman in the groin? No matter what the circumstances were.

Now, let us remember, Officer Epperson said Petitioner (Eddie) ran him (Epperson) off the road; then Officer Epperson offered to call Eddie a cab; offered to call Eddie's best friend, and he (Epperson) did not even know Eddie . . . or so Epperson claims. Trial Trans. 183, 184, 185 — 82-5785 App. P. 404, 405, 406, etc.

Epperson, Finan, and Tucker claimed Eddie was drunk, and he refused the breathalyzer, contra to K.R.S. 186.565(3).

Kentucky Law K.R.S. 189.520(6) provides — No person may be compelled to submit to any test specified in subsection (4) of this section, but his refusal to submit to such test shall result in revocation of his license as provided in K.R.S. 186.565(3).

K.R.S. 186.550 provides that — The court having jurisdiction over offense shall report convictions and send licenses to Department *Phillips v. Reeves* 231 S.W. 2d 63.

Common sense would tell us, — If there had been a conviction or a refusal to take a breathalyzer test, then Petitioner's (Eddie) license would have been suspended. (SEE Affidavit of Petitioner Eddie) This Petition P. ix.

"Circuit courts and inferior courts have mandatory power to suspend licenses of driver convicted of driving while intoxicated." *Commonwealth v. Harris* 128 S.W. 2d 579, *Commonwealth, Dept. of Public Safety v. Cox* 467 S.W. 2d 603. K.R.S. 186.560(1)(b) provides mandatory revocation of driving license upon receiving record of conviction of driving a vehicle while under the influence of intoxicating liquor. *Commonwealth, Dept. of Public Safety v. Tuemler* 526 S.W. 2d 305.

Mr. McMurtry is well aware that no court has reported any conviction of driving a vehicle while intoxicated (DUI), nor has any officer made any sworn statement (pursuant to K.R.S. 189.520) to the Department that Eddie has refused to submit to any test provided by law.

Mr. McMurtry: "I'll stipulate that . . . whatever the statute is I'll stipulate to the wording . . ."

The Court: "It is stipulated that Mr. Thompson's drivers license were never revoked as result of this incident or any other incident." Trial Trans. P. 270, 272; 81-5785 App. P. 429, 494.

"A party is bound by what he stipulates." *Morlock v. NCR Corporation* 586 F 2d 1096 (6th Cir. 1978).

Any argument to a jury on presumption of intoxication was error. *Marcum v. Commonwealth* 483 S.W. 2d 122.

Mr. McMurtry knew he was out of bounds when he argued

to the jury that Petitioner (Eddie) was drunk when Epperson, Finan, and Tucker beat him (Eddie).

Typical of the answers given by Epperson, Finan, and Tucker — Finan: "I'd have to guess to answer most of the questions you've asked me today." Trial Trans. P. 124, 81-5785 App. P. 344.

Discussions and application of the "preclusion" doctrines of *res judicata* and collateral estoppel are well settled and are open to limited debate.

The trial court ordered Mr. Nelson to file the certified records in the foreclosure proceeding. Ex. N, this App. P. 25a — Pre-Tr. Trans. P. 40, 103, 116; 81-5784, App. P. 130, 193, 206.

Mr. Nelson neglected to file the certified record, but Mr. Nelson did file an Affidavit that he neglected to serve upon Petitioners or other parties.

In Mr. Nelson's affidavit, he makes reference to Kenton Circuit Court case # 33430 (Kentucky Court of Appeals 79-CA-1456 MR, Ex. O, this App. P. 28a).

In # 33430, Petitioner won the right to possession of the real estate involved in the case. (The Bank had sought possession of Petitioner's property. The Bank then sought dismissal of its action with prejudice.)

Judgment or decree of dismissal with prejudice is as conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to plaintiff. *Union Idem Co. v. Benton Lumber Co.* (1929 ARK) 18 S.W. 2d 327, *Olsen v. Muskegon Piston Ring Co.* (1941 6th Cir.) 117 F 2d 163.

Where the title and possession of land are both brought in question by reason of the alleged unlawful entry, the result of the litigation determines the question of title. *Chapman v. Shannan* 6 Ky. Opin. 30 And complainant must rely on strength of his own title rather than on weaknesses of his adversary's. *Tipton v. Smith* (Tenn 1979) 593 S.W. 2d 298.

Where a former recovery is given in evidence, it is equally conclusive, in its effect, as if it were specially pleaded by way of estoppel . . . and a right, question, or fact distinctly put in

issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies. *Southern Pacific R. Co. v. United States* 168 U.S. 1, 48-49.

We may note that the State court declined to entertain Petitioners' federal claim, saying, "Since we have no jurisdiction over Federal courts, we will not comment on the issue raised pertaining thereto." 79-CA-1456 MR, Ex. P, this App. Pp. 29a, 30a.

In this State a judgment foreclosing a mortgage as commonly expressed, does not divest title or confer possession. *K.R.S. 426.525, Springfield Fire and Marine Ins. Co. v. Phillips* 16 K.L.R. (Abstract) 390 . . . Nor does the mortgage convey an estate in the land to the mortgagee. *Morgan v. Wickliffe* 24 K.L.R. 1039, 70 S.W. 680.

Any person in peaceful and quiet possession of land shall not be turned out by the strong hand, by force or by terror . . . The policy of the law is to require that party who has in this manner obtained possession shall restore it to the party from whom it had been so obtained. *Iron Mountain and Helena Railroad v. Johnson* 119 U.S. 608, 30 LEd 504.

Considering this case, based upon the facts and principles involved, it seems to be opposed to all of the principles upon which the rights of citizens hinge. In such case there is no safety for the citizen, except in protection of the judicials, for rights which have been invaded by officers . . . (of the law) . . . professing to act for it. There remains to him, but the alternative of resistance which may amount to a crime. *Bivens Supra* 403 U.S. 388, *Monroe v. Pape* 365 U.S. 167.

Mr. Slukich admits that he knew about the judgment in 79-CA-1456 MR. Response to Plaintiff Motion, 78-70 NR 40, 81-5786 App. P. 66, 67. His (Slukich) acceptance of a deed for \$1 is further proof of the conspiracy alleged in these cases.

Inadequacy of consideration for a conveyance is a badge of fraud. *Hayes v. Rodger* (Ky) 447 S.W. 2d 597.

In an action against a bank and its employees (police offi-

cers) alleging, inter alia, false imprisonment, defendant was liable. *Traver v. Meshriy* 627 F 2d 934, 56 A.L.R. Fed. 885.

When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is the duty to take such jurisdiction. *England v. Louisiana Medical Examiners* 375 U.S. 411, 415.

Among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property. *Lynch v. Household Finance Corp.* 405 U.S. 538, 552; *Jones v. Mayer Co.* 392 U.S. 409, 420; *Shelley v. Kraemer* 334 U.S. 1, 10; *Kalb v. Fuerstein*, 308 U.S. 434.

Perhaps in time Defendant will shed some light on issues presented herein, by explaining why they (Defendants) wilfully refused to comply with the Court's pre-trial order, or why Mr. Haile and Mr. Nelson refused to answer interrogatories. 79-40, NR 19, 20.

Trials in Federal court no longer need to be carried on in the dark . . . Discovery serve (1) as a device, along with the pre-trial hearing under Rule 16 to narrow and clarify the basic issues between are parties; and (2) a device for ascertaining the facts or information as to the existence of whereabouts of facts relative to those issues. *Hickman v. Taylor* 329 U.S. 500.

By now, it should be obvious that summary judgment for defendants in this case is clearly erroneous.

A summary judgment against a plaintiff will be vacated and the cause will be remanded, where district court's order is opaque and unilluminating as to either the relevant facts or law with respect to the merits of plaintiffs claim. *Carter v. Stanton* 405 U.S. 669, 671.

It is well settled that when a motion for summary judgment is made and supported as provided in Rule 56(e), an adverse party may not rest upon the mere allegations or denials of his pleading, but his response by Affidavits or as otherwise provided in the Rule must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall enter against him.

First National Bank v. Cities Service Co. 391 U.S. 253, 288; *R. E. Cruise, Incorporated v. Bruggman* 508 F 2d 415 (1975 6th Cir.).

Where the party responding to a motion for summary judgment fails to file any affidavit or other supporting material in opposition to those filed by the moving party, the facts presented in the moving party's affidavits must be considered established. *Kemper v. American Broadcasting Co.* 365 F Supp. 1275.

Any extra pleading matter presented must be either dispositions, admissions, or affidavits. *Sardo v. McGrath* 196 F 2d 20, 22.

Civil Rights Attorney Fees Awards Act of 1976 was intended as incentive for private enforcement of civil rights and serves as general avenue for award of attorney fees following action under 1871 Civil Rights Statute. 42 U.S.C. 1983, 1988; *Christianburg Garment v. E.E.O.C.* 434 U.S. 422.

Courts of Appeals have intervened when district court has abused its discretion in an award of attorney fees. *Faraci v. Hickey Freeman Co.* 607 F 2d 1025.

The District Court abused discretion by not following any standard procedure in awarding counsel fee of Defendant. *Lindy Bros. Bldrs. v. Amer. R & S San Corp.* 487 F 2d 161.

In *Perkinsky v. Standard Oil Co.* 399 U.S. 222, the Supreme Court stated, "The amount of award for such services should, as a general rule be fixed in the first instance by the District Court after hearing evidence as to the extent and nature of service rendered."

If we examine Mr. Slukich's request, 78-70 NR 63, 81-5786, App. P. 119, 123 Vol 2, we find Mr. Slukich spent his money trying to get some title insurance on Petitioner's home — so he could prove in court that he owned the Thompson home by virtue of the deed the Bank had given him (Slukich). We may note that at the time of the pre-trial conference, Mr. Slukich still was unable to obtain title insurance.

The award of attorney fees to defendants in these cases appears not to meet the congressional intent in *Christianburg*

Garment v. E.E.O.C. 434 U.S. 422; *Accord Hughes v. Rowe* 449 U.S. 4.

Court should be especially solicitous of civil rights plaintiffs, and see that a civil rights complaint should not be dismissed, unless it appears to a certainty that the plaintiff would not be entitled to relief under any legal theory which might plausibly be suggested by the facts alleged. This solicitude for a civil rights plaintiff must be heightened, said the court, when he appears pro se, since in the great run of pro se cases the issues are faintly articulated and often dimly perceived, with the result that there is a greater responsibility upon the court to insure that constitutional deprivations are redressed. *Canty v. Richmond, Virginia, Police Department* 383 F Supp. 1396, Affirmed 526 F 2d 587.

This case could include a moral interpretation of K.R.S. 426.525.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Certiorari should be granted.

The Judgment below is a bizarre and unique departure from rules and decisions of this Court that have traditionally insured that Constitutional deprivations are redressed.

As to the State law issue, it is clear that Petitioners were entitled to possession of their real and personal property. *Thompson v. Peoples Liberty Bank* 79-CA-1456 MR. Ex. P, this App. P. 29a.

A litigant is in no event to be denied his right to return to Federal court unless it clearly appears that he fully litigated his Federal claims in the State court. *England v. Louisiana Medical Examiners* 375 U.S. 417.

Upon Petitioners uncontroverted Motion for Summary Judgment in the District Court, summary reversal is appropriate here, with directions.

PATRICIA THOMPSON, Pro Se

EDDIE THOMPSON, JR., Pro Se

CERTIFICATE OF SERVICE:

I hereby certify that 3 copies of the foregoing Petition have been served by the United States mail this day of June 1983, upon: Mr. Robert W. Carran, 314 Greenup Street, Mr. Stephen Wolnitzek, 1 W. 6th Street, Mr. Rodney Bryson, 600 First National Bank Building, Mr. Richard Nelson, 11 W. 6th Street, Mr. Stephen McMurtry, 906 City-County Building, all of Covington, Kentucky 41011; Mr. Burr Travis, 30 Shelby Street, Florence, Kentucky 41042; Mr. Steve Beshear, Kentucky Attorney General, Capitol Building, Frankfort, Kentucky 40601; and Mr. William F. Smith, United States Attorney General, Washington, DC.

PATRICIA THOMPSON

EDDIE THOMPSON, JR.

EXHIBIT A

NOT RECOMMENDED FOR
FULL TEXT PUBLICATION

No. 81-5784

No. 81-5785

No. 81-5786

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed March 10, 1983]

EDDIE THOMPSON, JR.,

PATRICIA THOMPSON,

Plaintiffs-Appellants
(81-5784)

v.

RICHARD NELSON,

Defendant-Appellee,

and

PEOPLE'S LIBERTY BANK; CARSON FURNITURE; GEORGE
WERMELING; RALPH HAILE; JUDY GUFFEY; RICHARD
NELSON; RICHARD SLUKICH; THOMAS E. EPPERSON;
JAMES TUCKER; TODD A. FINAN; JAMES LILES; BERNARD
SMITH; HENRY WARDEN; UNNAMED POLICE OFFICERS;
UNNAMED EMPLOYEES OF CARSON FURNITURE

Defendants-Appellees (81-5785),

and

RICHARD SLUKICH; PEOPLES LIBERTY BANK;

RALPH HAILE; RICHARD NELSON,

Defendants-Appellees (81-5786)

ORDER

Before: LIVELY and ENGEL, Circuit Judges; and SWYGERT, Senior District Judge.*

The plaintiffs appeal from judgments for the defendants and awards of attorneys' fees in these consolidated civil rights cases, which have been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

The plaintiffs allege various acts of harassment flowing from and including what they claim to be the illegal foreclosure of the mortgage on their residence. They further claim that the motives behind these acts were racial discrimination and the fact that Eddie Thompson contested a 1975 election. The district judge ordered a trial on the use of excessive force by the defendant police officers when they arrested Eddie Thompson. The jury returned a special verdict finding that the police officers had not used excessive force, and judgment was entered for these defendants. The district judge then granted motions for summary judgment in favor of the remaining defendants. Finally, the judge awarded attorneys' fees to the defendants, other than the police officers.

As to the trial on the issue of excessive force used by the police officers, the plaintiffs argue that the verdict was not supported by the evidence, that the bank officers should have been joined with the police officers, that the trial court failed to properly instruct the jury, and that opposing counsel was allowed to make impermissible statements. We find these contentions to be without merit.

The plaintiffs also claim that they were entitled to a directed verdict or judgment N.O.V. Based upon the evidence presented, these contentions are also without merit. *National*

* The Honorable Luther M. Swygert, Senior Judge for the U.S. Court of Appeals for the Seventh Circuit, sitting by designation.

Polymer Products, Inc. v. Borg-Warner Corporation, 660 F.2d 171 (6th Cir. 1981); *Coffy v. Multi-County Narcotics Bureau*, 600 F.2d 570 (6th Cir. 1979).

The district court was correct in granting the summary judgment motions of the remaining defendants, because the plaintiffs failed to present any specific facts which supported their civil rights claims but chose to rely on the conclusory allegations of their pleadings. *R. E. Cruise, Incorporated v. Bruggeman*, 508 F.2d 415 (6th Cir. 1975); Rule 56(e), Federal Rules of Civil Procedure.

Finally, we cannot say that the district judge abused his discretion in awarding attorneys' fees. *Tonti v. Petropoulous*, 656 F.2d 212 (6th Cir. 1981); see *Hughes v. Rowe*, 449 U.S. 5 (1980); *Christianburg Garment Company v. E.E.O.C.*, 434 U.S. 412 (1977).

Accordingly, it is ORDERED that the judgment of the district court be affirmed. Rule 9(d)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

ISSUED AS MANDATE: MAY 12, 1983
COSTS: NONE

[CERTIFICATION OMITTED]

EXHIBIT B

No. 81-5784

No. 81-5785

No. 81-5786

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

[Filed May 4, 1983]

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON,
Plaintiffs-Appellants,

v.

RICHARD NELSON, (81-5784)

and

(81-5785)

PEOPLES LIBERTY BANK; CARSON FURNITURE; GEORGE
WERMELING; RALPH HAILE; JUDY GUFFEY; RICHARD
NELSON; RICHARD SLUKICH; THOMAS A. EPPERSON;
JAMES TUCKER; TODD A. FINAN; JAMES LILES; BERNARD
SMITH; HENRY WARDEN; UNNAMED POLICE OFFICERS;
UNNAMED EMPLOYEES OF CARSON FURNITURE,

and

(81-5786)

RICHARD SLUKICH; PEOPLES LIBERTY BANK;
RALPH HAILE; RICHARD NELSON,
Defendants-Appellees.

ORDER

BEFORE: LIVELY and ENGEL, Circuit Judges; and SWYGERT, Senior Circuit Judge.*

Upon receipt and consideration of a petition for rehearing, or alternatively, for rehearing en banc in the above styled case; and,

No judge in active service in this Court having moved for rehearing en banc, and the motion therefore having been referred to the panel which heard the case; and,

The panel having noted nothing of substance in said motion for rehearing which had not been carefully considered before the issuance of the Court's order of March 10, 1983,

Now, therefore, it is ORDERED that the motion for rehearing or rehearing en banc be, and it hereby is, denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

* The Honorable Luther M. Swygert, Senior Judge for the U.S. Court of Appeals for the Seventh Circuit, sitting by designation.

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CONSOLIDATED CIVIL ACTION
NOS. 78-57, 78-70 and 79-40

No. 78-57

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD NELSON

Defendant

No. 78-70

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD SLUKICH, ET AL

Defendant

No. 79-40

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL

Defendant

ORDER

(Filed October 29, 1980)

On September 26, 1980, this court consolidated the three above actions brought by the plaintiff, Eddie Thompson. All three actions alleged a conspiracy to deprive the plaintiff of his Civil Rights through the foreclosure of the plaintiff's home and subsequent eviction of the plaintiff. The plaintiff has additionally alleged various acts of harassment, all done in concert to deprive him of his Civil Rights. One of these alleged acts of harassment, the use of excessive force in effecting an arrest by defendant police officers Epperson, Tucker, and Finan was tried by a jury on October 23rd and 24th of 1980, with the plaintiff appearing pro se. The jury returned for the defendants. The court is now faced with the question of the liability of the remaining individual and institutional defendants on cross-motions for summary judgment.

The court in an exhaustive search of the record, and after extensive pretrial conferences with the parties, concluded that the plaintiffs were attempting to convert a state action into a federal one by conclusionary allegations of conspiracy and race-motive animus. The plaintiffs were given 30 days from September 26, 1980, to file additional memoranda and affidavits in opposition to the defendant's motion for summary judgment and to allow the plaintiffs to flesh out their allegations concerning conspiracy and race-motivated actions.

The plaintiffs have filed extensive affidavits and memoranda in support of their position. After careful scrutiny of these documents, the court must conclude the plaintiffs have no evidence to offer of either racial animus or a conspiracy to deprive the plaintiffs of their constitutional rights. It is clear that there is no dispute as to the material facts of the case. The plaintiffs would have this court believe that the foreclosure and eviction were deliberate conspiracies against them based simply on the fact such events took place. As the record clearly discloses the legality of the foreclosure and subsequent eviction has already been extensively litigated in state court. Therefore, the court being advised,

IT IS ORDERED as follows:

1. That the defendants' motion for summary judgment are granted.
2. That the plaintiff's motion for summary judgment is denied.
3. That the defendants have 10 days from the date of this order to file a request for attorney's fees.

A separate judgment has been filed concurrently herewith.
This 29th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-57

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD NELSON

Defendant

JUDGMENT

(Filed October 29, 1980)

In accordance with the order entered concurrently herewith,

IT IS ORDERED AND ADJUDGED that the complaint be, and hereby is, dismissed, with prejudice, at the cost of the plaintiff.

This 29th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION 78-70

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD SLUKICH, ET AL

Defendant

JUDGMENT

(Filed October 29, 1980)

In accordance with the order entered concurrently herewith,

IT IS ORDERED AND ADJUDGED that the complaint be, and hereby is, dismissed, with prejudice at the cost of the plaintiff.

This 29th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION 79-40

EDDIE THOMPSON, JR., ET AL
Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL
Defendant

JUDGMENT

(Filed October 29, 1980)

In accordance with the order entered concurrently herewith,

IT IS ORDERED AND ADJUDGED that the complaint be, and hereby is, dismissed, with prejudice, at the cost of the plaintiff.

This 29th day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

EXHIBIT G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 79-40

EDDIE THOMPSON, JR.

Plaintiff

vs.

THOMAS EPPERSON, JAMES TUCKER
AND TODD FINAN

Defendants

JUDGMENT

(Filed October 31, 1980)

This action came on for trial on October 23, 1980 before the Court and a jury, Honorable William O. Bertelsman, District Judge, presiding, and the issues between Eddie Thompson, Jr., plaintiff, and Thomas Epperson, Todd Finan, and James Tucker, defendants having been duly tried and the jury having duly rendered its answers to interrogatories for a special verdict agreed to by the litigants,

IT IS ORDERED AND ADJUDGED that the plaintiff, Eddie Thompson, Jr. take nothing from the defendants, Thomas Epperson, Todd Finan, and James Tucker, that his complaint against them be dismissed, and that they recover of Eddie Thompson, Jr. the costs of this action.

Dated at Covington, Kentucky, this 31st day of October, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

Distribution:

Eddie Thompson, Jr., pro se

Stephen T. McMurtry, Attorney for Defendants

EXHIBIT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-57

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD NELSON

Defendant

ORDER

(Filed December 12, 1980)

This case is before the court on the motion of the plaintiff for reconsideration of the order and judgment of October 29, 1980, granting summary judgment for the defendant.

On September 26, 1980, this court consolidated the above action with *Eddie Thompson, et al. v. Richard Slukich, et al.*, Civil Action No. 79-70, and *Eddie Thompson, Jr., et al. v. People's Liberty Bank, et al.*, Civil Action No. 79-40. All three actions alleged a conspiracy to deprive the plaintiff of his civil rights through the foreclosure of the plaintiff's home and subsequent eviction of the plaintiff. The plaintiff additionally alleged various acts of harassment, all allegedly done in concert to deprive him of his civil rights. On Oc-

tober 29, 1980, this court granted summary judgment on behalf of the defendant Richard Nelson. The plaintiff fails to bring any new information to the attention of the court or to make any persuasive argument which would leave the court to believe that it was wrong in granting summary judgment for the defendant.

Therefore, the court being advised,

IT IS ORDERED that the motion for reconsideration of the order of October 29, 1980, granting summary judgment against the defendant Richard Nelson be, and hereby is, denied.

This 11th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

EXHIBIT I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-70

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD SLUKICH, ET AL

Defendant

ORDER

(Filed December 12, 1980)

This case is before the court on the motion of the plaintiff for reconsideration of the order and judgment of October 29, 1980, granting summary judgment for the defendants.

On September 26, 1980, this court consolidated the above action with *Eddie Thompson, Jr. et al. v. Richard Nelson*, Civil Docket No. 78-57 and *Eddie Thompson, Jr. et al. v. People's Liberty Bank, et al*, Civil Action No. 79-40. All three actions alleged a conspiracy to deprive the plaintiff of his civil rights through the foreclosure of the plaintiff's home and subsequent eviction of the plaintiff. The plaintiff additionally alleged various acts of harassment, all allegedly done in concert to deprive him of his civil rights. On October 29, 1980, this court granted summary judgment on behalf of all defendants in this action. The plaintiff fails to bring any new information to the attention of the court or make any persuasive argument which would leave

the court to believe that it was wrong in granting summary judgment for the defendants.

Therefore, the court being advised,

IT IS ORDERED that the motion for reconsideration of the order of October 29, 1980, granting summary judgment against the defendants be, and hereby is, denied.

This 12th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

EXHIBIT J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 79-40

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL

Defendant

ORDER

(Filed December 12, 1980)

This case is before this court on the motion of the plaintiff for reconsideration of the order and judgment of Oc-

tober 29, 1980, granting summary judgment for the defendant, and a motion for judgment notwithstanding the verdict as to the defendants Epperson, Tucker and Finan.

On September 26, 1980, this court consolidated the above action with *Eddie Thompson, Jr. et al v. Richard Nelson*, Civil Docket No. 78-57 and *Eddie Thompson, et al. v. Richard Slukich, et al*, Civil Action No. 78-70. All three actions alleged a conspiracy to deprive the plaintiff of his civil rights through the foreclosure of the plaintiff's home and subsequent eviction of the plaintiff. The plaintiff additionally alleged various acts of harassment, all allegedly done in concert to deprive him of his civil rights. One of these alleged acts of harassment, the use of excessive force in effecting an arrest by defendant and police officers Epperson, Tucker and Finan was tried by a jury on October 23rd and 24th of 1980, with the plaintiff representing himself. The jury returned for the defendants. On October 29, 1980, this court granted summary judgment on behalf of all remaining defendants. Also on that date the plaintiff Thompson filed a motion for judgment notwithstanding the verdict or alternatively a motion for a new trial seeking to set aside the verdict for the defendants in the trial of Epperson, Tucker and Finan.

The plaintiff in support of his motion for a judgment notwithstanding the verdict argues essentially that the evidence did not support the jury's verdict. It is clear to this court that the evidence overwhelmingly supported the verdict of the jury. Therefore, a judgment notwithstanding the verdict or an order directing a new trial would be improper.

The plaintiff in addition has filed a motion for reconsideration of the summary judgment granted on October 29, 1980. The plaintiff fails to bring any new information to the attention of the court or make any persuasive argument which would leave the court to believe that it was wrong in granting summary judgment for the defendants.

Therefore, the court being advised,

IT IS ORDERED as follows:

1. That the motion notwithstanding the verdict, or in the alternative a new trial, be, and hereby is, denied.

2. That the motion for reconsideration of the order and judgment of October 29, 1980, granting summary judgment against remaining defendants be, and hereby is, denied.

This 12th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

Copies to:

E. Thompson, Jr.

B. Travis

S. McMurtry

R. Carran

R. Nelson

12-15-80

LBB

EXHIBIT K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CONSOLIDATED CIVIL ACTION NOS.
78-57, 78-70 and 79-40

78-57

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD NELSON

Defendant

78-70

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD SLUKICH, ET AL

Defendant

79-40

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL

Defendant

ORDER

(Filed December 18, 1980)

This matter comes before the court on the motions of the various defendants, in the above consolidated actions, seeking an award of attorney's fees pursuant to 42 U.S.C. § 1988.

On September 26, 1980, this court consolidated the three above actions brought by the plaintiffs Eddie Thompson, Jr. and his wife, Patricia Thompson. All three actions alleged a conspiracy to deprive the plaintiffs of their civil rights in the foreclosure of the plaintiffs' home and subsequent eviction of the plaintiffs. The plaintiffs additionally alleged various acts of harassment, all allegedly done in concert to deprive them of their civil rights. One of these alleged acts of harassment, the use of excessive force in effecting an arrest by defendant and police officers Epperson, Tucker and Finan was tried by a jury on October 23rd and 24th of 1980, with the plaintiffs representing themselves. The jury returned for the defendants. On October 29, 1980, this court granted summary judgment on behalf of all remaining defendants.

Now, the defendant Richard Slukich, by and through his counsel, Steven D. Wolnitzek, seeks an award of attorney's fees totaling \$2,628.13 for work expended in Civil Action No. 78-70.

The defendants People's Liberty Bank and Richard Haile, by and through their counsel Richard S. Nelson, seek an award of attorney's fees for work expended in Civil Action Nos. 78-70 and 79-40. In addition, James Liles and Bernard Smith seek through and by their counsel Richard Nelson, attorney's fees for work expended in Civil Action 79-40. In the same motion the defendant Richard Nelson seeks in propria persona, attorney's fees expended in his own defense in Civil Action 78-57, 78-70 and 79-40. In addition, the above defendants make an argument that fees for numerous other vexatious actions brought by the plaintiffs

against these and other defendants should be awarded to the defendants through the inherent powers of the court. However, the court is not inclined to consider awarding fees for any but the above consolidated cases.

The defendants Epperson, Finan and Tucker, by and through their counsel Steven McMurtry, seek attorney's fees for work expended in Civil Action 79-40.

The Supreme Court in *Christiansburg Garment Company v. E.E.O.C.*, 434 U.S. 412 (1977) set out requirements for an award of attorney's fees under 42 U.S.C. § 2000E-5(k) to the defendants when they prevail. The language of that statute is identical to that of 42 U.S.C. § 1988 and the Supreme Court's construction of 42 U.S.C. § 2000E-5(k) is applicable to the awarding of attorney's fees to defendants under § 1988. *Lopez v. Arkansas City Independent School District*, 570 F.2d 541 (1978). According to *Christiansburg*, a prevailing defendant can recover attorney's fees only if the claim made by the plaintiff was frivolous, unreasonable or groundless.

In the matter of the claim against the defendants Epperson, Tucker and Finan, it is not clear that the claim was completely frivolous, unreasonable or so groundless as to grant the defendants attorney's fees. The court must note that the claim arose out of an incident of confused circumstances. While the jury after one-and-a-half hours of deliberation came to the conclusion that the plaintiffs claim was meritless, the court is loathe to engage in *post hoc* reasoning on the basis of the jury's verdict. *Christiansburg Garment Company v. E.E.O.C.*, at p. 421.

However, an award of attorney's fees is in order for the remaining defendants. On October 29, 1980, the court granted the defendant's motion for summary judgment. After an exhaustive search of the record and extensive pre-trial conferences with the parties disclosed that the plaintiffs were attempting to convert a state action into a federal one by naked, conclusionary allegations of conspiracy and race motive animus. It is clear that there is no true dispute as

to the material facts of this case. The plaintiffs would contend that the foreclosure and eviction were deliberate actions taken against them by a conspiracy of the defendant. However, the record clearly discloses the legality of the foreclosure and subsequent eviction. It clear that the plaintiff's case consists simply of naked allegations and nothing more and was from its inception totally frivolous.

The court is reluctant to assert attorney fees against individuals. However, its dockets are too overburdened to entertain vexatious and harrassing litigation. The plaintiffs have filed 15 lawsuits in this court since 1977, almost all of them frivolous in nature. There are too many people who have invoked the jurisdiction of the court in good faith to permit them to be deprived of the justice to which they are entitled because substantial amounts of the court's time are occupied by spurious lawsuits of the kind involved here. Therefore, the court being advised,

IT IS ORDERED as follows:

1. That in Civil Action No. 78-57 defendant Richard Nelson be awarded \$960 for attorney's fees.

2. That in Civil Action No. 78-70 the defendant Richard Slukich be awarded \$2,628.13 for attorney's fees; and the defendants People's Liberty Bank & Trust Company, Richard V. Haile, Jr., James Liles, Bernard Smith, and Richard S. Nelson be awarded attorney's fees for a total of 32 hours of work on the above consolidated cases at a rate of \$60 per hour for a total of \$1,920.

3. That in Civil Action No. 79-40 the motion for an award of attorney's fees for the defendants Epperson, Tucker and Finan be, and hereby is, denied.

4. That the judgment be, and hereby is, joint and several against the plaintiffs, Eddie Thompson, Jr. and Patricia Thompson.

This 8th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

EXHIBIT L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-57

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON,

Plaintiffs

vs.

RICHARD NELSON

Defendant

JUDGMENT

(Filed December 18, 1980)

In accordance with the order entered concurrently herewith,
IT IS ORDERED AND ADJUDGED that the defendant
Richard Nelson recover of the plaintiffs Eddie Thompson, Jr.
and Patricia Thompson, jointly and severally, the sum of nine
hundred and sixty (\$960) dollars with interest thereon from
the date of this judgment.

This 18th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

EXHIBIT M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-70

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON Plaintiffs

v.

RICHARD SLUKICH,
PEOPLE'S LIBERTY BANK,
RALPH HAILE,
RICHARD NELSON Defendants

JUDGMENT

(Filed December 18, 1980)

In accordance with the order entered concurrently herewith,
IT IS ORDERED AND ADJUDGED as follows:

1. That the defendant Richard Slukich recover of the plaintiffs Eddie Thompson, Jr. and Patricia Thompson, jointly and severally, the sum of two thousand six hundred twenty-eight dollars and 13/100 (\$2,628.13) with interest thereon from the date of this judgment.

2. That the defendants People's Liberty Bank, Ralph Haile, and Richard Nelson recover of the plaintiffs Eddie Thompson, Jr. and Patricia Thompson, jointly and severally, the sum of one thousand nine hundred and twenty (\$1,920) dollars with interest thereon from the date of this judgment.

This 18th day of December, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

25a

EXHIBIT N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO 78-57

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD NELSON

Defendant

CIVIL ACTION NO. 78-70

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

RICHARD SLUKICH, ET AL

Defendant

CIVIL ACTION NO. 79-40

EDDIE THOMPSON, JR., ET AL

Plaintiff

vs.

PEOPLE'S LIBERTY BANK, ET AL

Defendant

ORDER

(Filed September 23, 1980)

A pre-trial conference was held in the above-styled cases on September 10, 1980, wherein the above-styled cases were consolidated. All attorneys of record were present and the plaintiff, Eddie Thompson, noted no objection to the consolidation of said cases.

The plaintiffs were present and represented pro se by Eddie Thompson, Jr.; Defendant Richard Nelson (Case No. 87-57) was present and represented by Rodney S. Bryson; Defendant Richard Slukich (Case No. 78-70 and Case No. 79-40) was not present, but represented by Robert W. Carran and Steve Wolnitzek; Defendants People's Liberty Bank and Ralph Haile were not present, but represented by Richard Nelson; Defendant Richard Nelson was present and represented himself pro se; Attorney Burr J. Travis was present and represented Judy Guffey of Carson Furniture; Stephen T. McMurty, Office of the City Solicitor, Covington, Kentucky, was present and represented all city employees.

The court having heard counsel and having been sufficiently advised,

IT IS ORDERED as follows:

1. The trial against the police officers, Thomas E. Epperson, James Tucker, and Todd A. Finan, involved in the alleged use of excessive force against the plaintiff in the course of an arrest occurring on April 15, 1978, which plaintiff contends violated his Civil Rights, is set for trial by jury on October 23, 1980, at 9:30 A.M. The court considers this matter a separate claim, and hereby orders a separate trial thereon, by virtue of F.R.Civ.P. 42.

2. Motions to dismiss of defendants with regard to all other claims as supplemented by the court records ordered to be filed at the pre-trial conference, and by the statements of the plaintiff made at the pre-trial conference, shall be considered as motions for summary judgment. Plaintiff shall have 30 days from September 10, 1980, to file any additional memoranda or affidavits he desires in opposition to said motions. All affidavits must comply with the requirements of F.R.Civ.P.

56(e). At the conclusion of said 30 days, the motions for summary judgment will be taken under submission, without further order of the court.

3. Counsel Richard Nelson is to file the certified record from the state court as to the foreclosure of the property located at 736 Highland Avenue, Covington, Kentucky.

4. Counsel for Defendant Richard Slukich is ordered to make the warrant and complaint of the state court criminal trespass case referred to at the pre-trial conference a part of the record herein.

5. The amended answers of police officers, Thomas E. Epperson, James Tucker, and Todd A. Finan, tendered on September 2, 1980, be and hereby are, ordered filed and all parties are granted 10 days from September 10, 1980, to file any other amended pleadings.

This 22nd day of September, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[CERTIFICATION OMITTED]

EXHIBIT O

AFFIDAVIT

(Filed September 18, 1980)

I, Richard S. Nelson, a member of the Bar of the Kentucky Supreme Court, of the United States Supreme Court and the United States District Court for the Eastern District of Kentucky do hereby certify that the record in the case of Peoples Liberty Bank and Trust Company vs. Eddie Thompson, Jr. and Patricia Thompson, # 33430 cannot be made available at the present time to the United States District Court as same is in Frankfort, Kentucky in the office of the Clerk of the Supreme Court of Kentucky upon a Motion of Eddie Thompson, Jr. and Patricia Thompson to that court for Discretionary Review.

I further certify that I have made a copy of what I believe to be all of the pleadings in said matter which I have compiled from my file in this matter and certify that same is attached.

/s/ RICHARD S. NELSON

SUBSCRIBED AND SWORN TO before me, a Notary Public, this the 17th day of September, 1980.

/s/ LINDA JEAN STUMPF
NOTARY PUBLIC
STATE AT LARGE

MY COMMISSION EXPIRES:

2/8/84

[No Certification that a Copy was served on Other Parties to This Action.]

EXHIBIT P

OPINION RENDERED: May 2, 1980
NOT TO BE PUBLISHED

**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS**

NO. 79-CA-1456-MR

**PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,**

Appellants

v.

PEOPLES LIBERTY BANK

Appellee

**Appeal From Kenton Circuit Court
Honorable William R. Dunn, Judge
Action No. 33430**

AFFIRMING

• • •

**BEFORE: HAYES, Chief Judge, Breetz and WILHOIT,
Judges.**

HAYES, CHIEF JUDGE. Eddie Thompson, Jr. and Patricia Thompson appeal from an order and judgment of the Kenton Circuit Court dismissing a forcible detainer proceeding and the appeal therefrom. The Peoples Liberty Bank and Trust Company of Covington, Kentucky, filed the complaint for forcible detainer in Kenton Quarterly Court in September, 1977. The quarterly court rendered judgment for the bank

on September 26, 1977 and ordered that a writ of restitution issue. The writ of restitution was never executed. The Thompsons appealed the quarterly court judgment to Kenton Circuit Court on September 28, 1977. No action was taken by either party to the proceeding until March 5, 1979 when the bank moved to dismiss the case as being moot on the grounds that the bank had obtained the property pursuant to another Kenton Circuit Court action and had conveyed same in July, 1978. The Thompsons filed a motion for a trial date on March 9, 1979. On March 13, 1979 the circuit court entered a judgment dismissing the case with prejudice as being moot. From this judgment the Thompsons appeal.

The Thompsons have proceeded pro se in these proceedings and apparently in the several actions in the various Kenton courts, obviously a substantial contributing factor to the Thompsons' confusion and lack of understanding concerning this proceeding. Apparently the Thompsons no longer have the property in question and ask this court to order the circuit court to put them in possession of such property. However, the simple fact is, that the property was not taken from them as a result of this case, but such was accomplished in a separate circuit court action. The Thompsons are attempting to attack a judgment over which this court has no jurisdiction. The circuit court ordered the action dismissed explaining to the Thompsons in a hearing that that was the most relief which it could grant, i.e. the bank's forcible detainer proceeding would be dismissed with prejudice. Since the Thompsons had not been relieved of their property as a result of the forcible detainer proceeding but rather had been so relieved as a result of a circuit court proceeding, the dismissal of the forcible detainer proceeding could not result in the Thompsons being placed in possession of the property in question. The circuit court was not in error in dismissing the proceedings with prejudice. It is the bank not the Thompsons, as they perceive, who are prejudiced with respect to the proceedings.

Since we have no jurisdiction over federal courts, we will not comment on the issue raised pertaining thereto.

The judgment is affirmed.
ALL CONCUR.

ATTORNEYS FOR APPELLANTS:

Patricia Thompson
Eddie Thompson, Jr., Pro Se
736 Highland Avenue
Covington, Kentucky 41011

ATTORNEY FOR APPELLEE:

Richard Nelson
11 West 6th Street
Covington, Kentucky 41011

EXHIBIT Q

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

No. 78-57

PATRICIA THOMPSON
EDDIE THOMPSON, JR.,

Plaintiffs

vs.

MR. RICHARD NELSON

Defendant

COMPLAINT

(Filed July 10, 1978)

SERVE: Mr. Richard Nelson, 11 W. Sixth Street, Covington, Kentucky 41011

Plaintiffs Patricia and Eddie Thompson, Jr. state:

1. That jurisdiction of this court in this matter arises under 28 U.S.C. 1343(3); 42 U.S.C. 1983, 1985, 1986.
2. That Patricia and Eddie Thompson, Jr. are black citizens of the State of Kentucky and reside in the City of Covington.
3. That Richard Nelson is and/or was attorney for Peoples Liberty Bank, Merv Grayson, Sr., and Richard Nelson, Pro Se in Civil Action 77-72, 77-73.
4. That Mr. Richard Nelson filed an illegal foreclosure suit for Peoples Liberty Bank (Kenton Circuit Court 31503).
5. That Mr. Merv Grayson, Sr., Mr. Richard Nelson, and others conspired to bring about the illegal foreclosure.
6. That after Mr. Nelson obtained judgment in the illegal

foreclosure, he filed a complaint for forcible detainer in Kenton Quarterly Court. Exhibit A.

7. That Patricia and Eddie Thompson, Jr. filed a Traverse in that complaint for forcible detainer, Civil Action 9817. Exhibit B.

8. That the Writ of Forcible Detainer is Kenton Circuit Court No. 33430.

9. That Mr. Nelson Has been able to prevent that court from calling Civil Action No. 33430.

10. That Mr. Nelson had Judge Goodenough to sign a void order, Exhibit C, which both Mr. Nelson and the Judge knew to be void.

11. That with this void order, Mr. Nelson caused the Sheriff's Departments to break into plaintiffs' home and set their furnishings upon the street. Exhibit D.

12. That Patricia and Eddie Thompson, Jr. appealed the void Order and the appeal was dismissed. Exhibit E.

13. That in Kentucky the procedure is to dismiss void judgment on appeal.

14. That after the Court of Appeals dismissed the void judgment, Mr. Nelson continued to harass Patricia and Eddie Thompson, Jr. and family by letter and by having the Sheriff's Department of Kenton County to issue papers that had no valid effect according to state law. Exhibit F.

15. That on a number of occasions Mr. Nelson threatened to have Patricia and Eddie Thompson, Jr. arrested for no just cause.

16. That Mr. Nelson did conspire, with others, and had Patricia Thompson arrested for no cause.

17. That Mr. Nelson did all of the above because plaintiffs are Negro; because plaintiff Eddie Thompson, Jr. had contested the May 1975 Primary Election; and because Peoples Liberty Bank was paying him to do thus.

18. That Mr. Nelson represented a defendant in the contesting of the May 1975 primary election.

19. That Mr. Nelson was not paid for his services in the election contest.

20. That Mr. Nelson and his client and/or clients had threatened to "get" Thompson for contesting the May 1975 primary.

21. That even though Mr. Nelson knew that neither he nor any of his client/s had any justifiable claims against Patricia and Eddie Thompson, Jr., he wilfully misrepresented facts in the Kenton Circuit Court.

22. That Mr. Nelson's actions have cause plaintiffs and their family much grief, vexation, anxiety, and mental suffering.

WHEREFORE, plaintiffs pray the court for judgment against Richard Nelson as follows:

1. For \$50,000 declaratory judgment
2. For \$25,000 punitive damages.
3. For trial by jury
4. For the Court to restrain Mr. Nelson from illegal interference and harassment of plaintiffs.
5. For any other good and proper relief they may be entitled.

/s/ PATRICIA THOMPSON
 PATRICIA THOMPSON, Pro Se
 736 Highland Avenue
 Covington, Kentucky 41011
 (606) 491-6278

/s/ EDDIE THOMPSON, JR.
 EDDIE THOMPSON, JR., Pro Se
 736 Highland Avenue
 Covington, Kentucky 41011
 (606) 491-6278

EXHIBIT R

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

NO. 78-57

PATRICIA THOMPSON
EDDIE THOMPSON, JR.,

Plaintiffs

vs.

RICHARD NELSON

Defendant

AMENDMENT OF PLEADINGS AS OF COURSE

(Filed September 21, 1978)

• • •

23. That on or about April 15, 1978, Richard Nelson had conspired to cause certain policemen (City of Covington) to beat Eddie Thompson, Jr. for no just cause.

24. Than on April 12, 1978, Richard Nelson had caused Judge Goodenough to sign a void order "Writ of Possession".

25. That the purpose of this order was to provide Mr. Nelson and his co-conspirator with a just cause for breaking into plaintiffs' home.

26. That prior to April 12, 1978, Mr. Nelson had written plaintiffs a letter informing them to notify him when they would voluntarily move, (giving 10 days to answer) or he would come in and move the furnishings himself.

27. That Eddie Thompson, Jr. called Richard Nelson to inquire of his intent.

28. That Richard Nelson informed Eddie Thompson, Jr. to move or he would take care of him.

29. That Eddie Thompson, Jr. did not know what Mr. Nelson meant and Eddie Thompson, Jr. asked Mr. Nelson what he meant.

30. That Mr. Nelson hung up on Eddie Thompson, Jr.

31. That Mr. Nelson and Mr. Haile conspired to engage Mr. Richard Slukich, an attorney, to fabricate criminal charges on Eddie Thompson, Jr.

32. That Mr. Slukich did fabricate criminal charges, namely, Trespassing in the first degree and Burglary in the first degree.

/s/ EDDIE THOMPSON, JR.
 EDDIE THOMPSON, JR., Pro Se
 736 Highland Avenue
 Covington, Kentucky 41011
 (606) 491-6278

/s/ PATRICIA THOMPSON
 PATRICIA THOMPSON, Pro Se
 736 Highland Avenue
 Covington, Kentucky 41011
 (606) 491-6278

[CERTIFICATION OMITTED]

EXHIBIT S

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

NO. 78-70

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON

Plaintiffs

vs.

RICHARD SLUKICH, PEOPLES LIBERTY BANK,
RALPH HAILE, RICHARD NELSON

Defendants

AMENDED COMPLAINT

(Filed September 25, 1979)

SERVE: Richard Nelson, 11 W. 6th Street, Covington,
KY 41011; Ralph Haile, President, Peoples Lib-
erty Bank, 6th and Madison Streets, Covington,
KY 41011

Patricia and Eddie Thompson, Jr., for their Complaint state
the following:

1. The instant action is a suit seeking to have declared null
and void a deed, dated June 27, 1978, from Peoples liberty
Bank to Richard Slukich. Said deed being in violation of the
Champerty Statutes of Kentucky. K.R.S. 372.070.

2. That they are Negroes and reside in the City of Coving-
ton.

3. That jurisdiction is found under 42 U.S.C. 1983, 1985, and 1986.

4. That Peoples Liberty Bank illegally foreclosed on property owned by Patricia and Eddie Thompson, Jr. located at 736 Highland Avenue, Covington, Kentucky, described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 50.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3, thence westwardly along the south line of said Alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said lots, 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. That Peoples Liberty Bank foreclosed because of plaintiffs' race and because Eddie Thompson, Jr. contested an election.

6. That at the time the original complaint was filed, a suit was pending in Kenton Circuit Court (#33430) to determine ownership of said property or eject the rightful owners.

7. Said case was Styled "Peoples Liberty Bank Vs. Eddie Thompson, Jr. and Patricia Thompson."

8. That Peoples Liberty Bank moved the Kenton Circuit Court to dismiss their ejectment proceeding with prejudice (#33430).

9. The the Kenton Circuit Court granted said Motion on March 13, 1979.

10. That Mr. Slukich, an attorney, was hired by Richard Nelson, an attorney, and Ralph Haile — agents of Peoples Liberty Bank — solely to bring criminal charges against Eddie Thompson, Jr.

11. That Mr. Slukich did bring (or had brought) criminal charges against Eddie Thompson, Jr. (Criminal trespass 1°, 78-M-2912; and Burglary 1°).

12. That on September 13, 1979, Mr. Richard Slukich participated in the second staged trial (Kenton District Court, 78-M-2912) in an effort to frame Eddie Thompson, Jr. on criminal charges he had brought against Eddie Thompson, Jr.

13. That Mr. Slukich was a witness and a prosecutor in this case. Separation of witness was ordered, but the Judge allowed Mr. Slukich to assist the prosecutor.

14. That under oath Mr. Slukich testified that he "looked at (looked in the window) my home (the property in question) with the intent of purchasing it sometime between July 19, 20, or 21, 1978; that he did not see the police officers (hired by Peoples Liberty Bank) who occupied the premises on a 24-hours-a-day basis (with instructions to arrest Eddie Thompson, Jr. on criminal trespass); that he did not know the exact amount of the mortgage he had paid for 14 months; that he would not present his payment book and any other evidence in this case."

15. That (under oath) Officer Liles testified that he and other police officers leased my home (736 Highland Avenue) for \$200 a month and the purpose was to bring Criminal trespass charges against Eddie Thompson, Jr., and they were paid \$5 an hour.

16. That subsequent to the illegal acts complained of herein, Mr. Slukich, Mr. Nelson, and Mr. Haile (agents of Peoples Liberty Bank) conspired to have all of plaintiffs' furnishings, clothing, business tools, business records, money, and other personal effects stolen.

17. That on July 29, 1978, Mr. Richard Slukich wilfully lied, claiming ownership of 736 Highland Avenue, Covington, Kentucky.

18. That this false claim was maliciously intended and did cause Eddie Thompson, Jr. to be arrested and put in jail.

19. That as an attorney, Mr. Slukich knew that if he had a legitimate right to the property at 736 Highland Avenue, Covington, Kentucky, it would have been the responsibility of the Bank to deliver him the property.

20. That Peoples Liberty Bank made no efforts to deliver the premises at 736 Highland Avenue to Mr. Slukich.

21. That Mr. Slukich's claim is a sham, but was done to cause Patricia and Eddie Thompson, Jr. much trouble, expense, and damage in the way of costs in the defense of same.

22. That Mr. Slukich is aware that Peoples Liberty Bank illegally foreclosed on the aforementioned property because plaintiffs are Negroes and because Eddie Thompson, Jr. contested an election, and Mr. Slukich's efforts are to aid the Bank.

23. That Mr. Slukich knowingly and wilfully committed all of the acts complained of herein.

WHEREFORE, plaintiffs pray for:

1. Twenty-five Thousand Dollars (\$25,000) declaratory damages.
2. Twenty-five Thousand Dollars (\$25,000) punitive damages.
3. Trial by jury.
4. Costs expended herein.
5. Any other relief to which they may be entitled.

/s/ EDDIE THOMPSON, JR.
EDDIE THOMPSON, JR., Pro Se

/s/ PATRICIA THOMPSON
PATRICIA THOMPSON, Pro Se

[CERTIFICATION OMITTED]

41a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

NO. 78-70

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON

Plaintiffs

vs.

RICHARD SLUKICH

Defendant

Supplemental Affidavit
In Support Of Motion For Trial Date Certain
Before The Court And Jury
and/or

Motion For Summary Judgment And Hearing

(Filed September 25, 1979)

Comes now Patricia and Eddie Thompson, Jr., plaintiffs herein, and submit the attached Affidavit in support of their Motion.

/s/ EDDIE THOMPSON, JR.
EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
(606) 491-6278

/s/ PATRICIA THOMPSON
PATRICIA THOMPSON, Pro Se
736 Highland Avenue
Covington, Kentucky 41011
(606) 491-6278

[CERTIFICATION OMITTED]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

No. 78-70

EDDIE THOMPSON, JR.
PATRICIA THOMPSON

Plaintiffs

vs.

RICHARD SLUKICH

Defendant

AFFIDAVIT

Comes now Patricia Thompson and Eddie Thompson, Jr., being duly cautioned and sworn and state the following:

1. That on July 29, 1978, Mr. Richard Slukich had Mr. John Elfers to sign a warrant against Eddie Thompson, Jr. charging him with criminal trespassing.

2. That Mr. Slukich had been hired by Mr. Nelson, Mr. Haile, and Peoples Liberty Bank to bring these charges.

3. That on September 13, 1979, Judge Stephens held a bogus trial for the purpose of framing Eddie Thompson, Jr. on trespassing charges.

4. That Eddie Thompson, Jr. was not allowed to present any evidence at the trial.

5. That Mr. Slukich, who had brought these charges, served as witness and as a prosecutor.

6. That Mr. Slukich, under oath, told the jury he "had not been in our house before he bought it, but that he looked in the window sometime between July 19, 20, and 21, 1978, and that he did not see the police officers who were staying in the house on a 24-hours-a-day watch."

7. That he (Slukich) did not know what the mortgage amount was.

8. That Mr. Slukich could not explain why the deed was mailed to Mr. Nelson.

9. That police officer James Liles testified under oath that he and other police officers leased our home on July 19, 1978, for \$200 a month and they were paid \$5 an hour, and that they had instructions to arrest Eddie Thompson, Jr. and charge him with criminal trespass and that Mr. Ralph Haile had hired them.

/s/ EDDIE THOMPSON, JR.
EDDIE THOMPSON, JR.

/s/ PATRICIA THOMPSON
PATRICIA THOMPSON

[CERTIFICATION OMITTED]

EXHIBIT T

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

NO. 79-40

EDDIE THOMPSON, JR.
PATRICIA THOMPSON

Plaintiffs

vs.

PEOPLE'S LIBERTY BANK, CARSON FURNITURE,
GEORGE WERMELING, RALPH HAILE, JUDY
GUFFEY, RICHARD NELSON, RICHARD SLUKICH,
THOMAS E. EPPERSON, JAMES TUCKER, TODD
A. FINAN, JAMES LILES, BERNARD SMITH,
HENRY WARDEN, UNNAMED POLICE OFFICERS,
UNNAMED EMPLOYEES OF CARSON FURNI-
TURE.

Defendants

COMPLAINT

(Filed April 16, 1979)

Serve: Ralph Haile, People's Liberty Bank, 6th & Madison,
Covington, KY; Judy Guffey, Carson Furniture,
203-205 Pike St. Covington, KY; George Wermel-
ing, Mayor, City of Covington City-County
Building, Covington, KY; Richard Nelson, 11 W.
6th Street. Covington, KY; Richard Slukich, 314
Greenup Street, Covington, KY; Chief Schwartz,
Thomas Epperson, James Tucker, Todd
A. Finan, James Lilies, Bernard Smith, Henry
Warden of the Covington Police Department,
City-County Building, Covington, KY.

Patricia and Eddie Thompson, Jr. for their complaint state the following:

1. That jurisdiction of this Court in this matter arises under 28 U.S.C. 1343(3); 42 U.S.C. 1983, 1985 and 1986.

2. That this is an action for damages as a result of defendants conspiring to deprive plaintiffs of their personal property after an illegal foreclosure on plaintiffs' home by People's Liberty Bank.

3. That the defendants, individual and/or acting through officers, agents and/or employees, invaded plaintiffs' rights (of privacy and deprived them of personal possessions) by wilfully and maliciously causing, directing and/or participating in (1) the breaking into of plaintiffs home, (2) the stealing and destroying of plaintiffs' furnishings, clothing, business tools, business records, money, and other personal items, and (3) the beating of Eddie Thompson, Jr.

4. That People's Liberty Bank had illegally foreclosed real properties the Thompsons had an interest in, including their home, because Eddie Thompson, Jr. had contested the May Primary Election in 1975.

5. That subsequently, Richard Nelson filed a Forcible Detainer which was traversed to the Kenton Circuit Court.

6. That Richard Nelson recognized the Ejectment proceeding would be a trial by jury and prevented in from being called.

7. That on or about October 19, 1977, Richard Nelson had Judge Goodenough to sign a void order called "Writ of Possession".

8. That the Sheriff executed that void order on October 27, 1977.

9. That Patricia and Eddie Thompson, Jr. appealed the October 19, 1977, void order.

10. That the Appeal was finally dismissed on March 31, 1978.

11. That subsequently, Richard Nelson wrote Eddie Thompson, Jr. instructing the Thompsons to call him within

10 days and let him know when they (the Thompsons) were moving.

12. That Eddie Thompson, Jr. did call Richard Nelson, and Mr. Nelson told Eddie Thompson, Jr. to move or he would have him taken care of.

13. That when Eddie Thompson, Jr. asked Mr. Nelson what he meant, Mr. Nelson hung up.

14. That on April 12, 1978, Mr. Nelson had Judge Good-enough to sign a second void order entitled "Writ of Possession."

15. That Mr. Nelson had planned to have the April 12, 1978, order executed in 10 days.

16. That Mr. Nelson intended to use police officers to execute the "Writ of Possession".

17. That Mr. Nelson intended for the police officers to beat Eddie Thompson, Jr. so as to threaten and intimidate Patricia Thompson and their children.

18. That subsequently, on or about April 15, 1978, Eddie Thompson, Jr. had parked his truck in a bus stop at 18th and Madison and had crossed the street on his way to Pasquale's Pizza.

19. That the buses were not running.

20. That a police officer pulled in behind Thompson's truck and called out that the truck was parked in a bus stop.

21. That Thompson started back across the street to move the truck, but the officer called Thompson to the sidewalk, asking him his name and address.

22. That Eddie Thompson, Jr. told the police officer his name and where he lived.

23. That the police officer then told Eddie Thompson,, Jr. to walk a straight line.

24. That Eddie Thompson, Jr. asked the police officer what the problem was.

25. That the police officer told Thompson to walk up the street.

26. That unbeknown to Thompson at the time, the officer (Epperson) radioed for 2 other policemen.

27. That after radioing for these police officers, Officer Epperson called Thompson back.

28. That Officer Epperson told Eddie Thompson, Jr. to follow him to the police cruiser.

29. That when Eddie Thompson, Jr. and Officer Epperson reached the police cruiser, Officer Epperson told Thompson to get into the cruiser.

30. That Officer Epperson did not ask Thompson for his driver's license or tell him he was under arrest on any charges.

31. That when Officer Epperson told Eddie Thompson, Jr. to get into the cruiser, Thompson asked Officer Epperson what the problem was.

32. That Officer Epperson started beating Eddie Thompson, Jr. about the head with him "Billy Club".

33. That Eddie Thompson, Jr. put his hands over his head to protect his head.

34. That as Eddie Thompson, Jr. put his hands over his head, 2 cruisers, lights flashing, arrived at the same time. Both officers came out of their cruisers with their clubs swinging (Finan and Tucker).

35. That as the police officers struck Eddie Thompson, Jr. with their clubs, Thompson fell to the ground and started yelling for help.

36. That these police officers kicked and beat Eddie Thompson, Jr. nearly unconscious.

37. That a crowd of people appeared at the scene.

38. That the police officers handcuffed Eddie Thompson, Jr., then dragged him across the street and put him into a cruiser.

39. That after the officers had put Eddie Thompson, Jr. into the cruiser, they went back across the street.

40. That one officer (Finan) came to the cruiser, pulled a small caliber automatic pistol and told Eddie Thompson, Jr. he would put him in the river.

41. That when the cruiser reached the police station, Eddie Thompson, Jr. was unable to get out of the police cruiser.

42. That the police officers dragged Eddie Thompson, Jr. out of the police cruiser and into the building.

43. That when the police officers got to the second floor, a police officer asked Thompson his name and address.

44. That Eddie Thompson, Jr. gave his name and address; and asked to make a phone call, which was refused.

45. That Richard Nelson engaged these police officers to beat Eddie Thompson, Jr.

46. That Ralph Haile paid to have these police officers threaten and intimidate Eddie Thompson, Jr.

47. That if the crowd had not appeared at the scene, the police officers would have put Eddie Thompson, Jr. in the river as Officer Finan had threatened.

48. That as a cover-up, these police officers charged Eddie Thompson, Jr. with Assaulting a police officer, Disorderly conduct, Resisting arrest, and D.U.I. Ex. 3

49. That Eddie Thompson, Jr. filed charges with Mayor George Wermeling against the police officers pursuant to K.R.S. 95.450. Ex. 1, 2.

50. That as of today, there has been no hearing on the charges against the police officers.

51. That Mayor George Wermeling wilfully neglected to hold a hearing because he knew these police officers had done wrong. Ex. 4, 5, 6, 6A.

52. That Mayor Wermeling knew People's Liberty Bank had illegally foreclosed on the Thompsons and that People's Liberty Bank was trying to steal the Thompsons' home.

53. That when the police officers did not kill Eddie Thompson, Jr., Richard Nelson and Ralph Haile came up with another plan.

54. That subsequently, on July 17, 1978, Ralph Haile and Richard Nelson had the Sheriff execute the void order Richard Nelson had Judge Goodenough to sign on April 12, 1978.

55. That while Eddie and Patricia Thompson were at work, Sheriff's deputies and police officers forced their way into Patricia and Eddie Thompson, Jr.'s home.

56. That the Sheriff's deputies and the police officers knew the April 12, 1978, order was void, but they wilfully carried out the order.

57. That Richard Nelson and Ralph Haile knew that Eddie Thompson, Jr. knew the April 12, 1978, order was void and illegal and that Eddie Thompson, Jr. would probably resist this illegal act.

58. That Ralph Haile and Richard Nelson had about 6 City police officers on duty that date.

59. That to prevent the Thompsons from re-entering their home, these police officers occupied the Thompson home. Ex. 11, 11A.

60. That officers James Liles and Bernard Smith were 2 of the police officers.

61. That Officer Liles threatened to use force if Eddie Thompson, Jr. did not leave his home.

62. That these armed police officers took possession and occupied the Thompsons' home from July 17, 1978, to July 27, 1978, on a 24-hour basis.

63. That these police officers had orders to shoot if the Thompsons attempted to enter their home.

64. That a group of citizens went to the Mayor and Commissioners' meeting on July 27, 1978, to inquire as to why the police officers were occupying the Thompson home.

65. That Mayor Wermeling knew the police officers were at the Thompson home, but he denied any were there.

66. That Mr. Haile and Mr. Nelson hired Richard Slukich to cook up a scheme to bring criminal charges against Eddie Thompson Jr.

67. That Mr. Haile and Mr. Nelson deeded the Thompson home from People's Liberty Bank to Richard Slukich.

68. That Richard Nelson had the deed mailed to himself.

69. That the sole purpose of the deed to Richard Slukich was for Slukich to bring criminal charges against Eddie Thompson, Jr. and to have police officers threaten and intimidate Eddie Thompson, Jr. and family.

70. That Richard Slukich visited the Thompson home on July 31, 1978.

71. That Richard Slukich told Eddie Thompson, Jr. that he had purchased the Thompson home and if Eddie Thompson, Jr. did not leave, he would have him arrested.

72. That Eddie Thompson, Jr. informed Mr. Slukich of the situation surrounding his home.

73. That Mr. Slukich informed Eddie Thompson, Jr. that he knew, but if Thompson did not leave, he would have him arrested.

74. That Mr. Slukich did have Mr. John Elfers sign a warrant of arrest charging Eddie Thompson, Jr. with criminal trespassing in the first degree. Ex. 7.

75. That on or about August 8, 1978, Richard Slukich had 2 men to break into the Thompson home and change the lock/s on the door/s.

76. That City police officers stood by to prevent Thompson from doing anything. Ex. 12.

77. That on or about the 14th day of August, 1978, Mr. Slukich, Mr. Haile, and Mr. Nelson had Officer Henry Warden falsely accuse Eddie Thompson, Jr. of Burglary in the first degree. Ex. 8, 8A.

78. That subsequently, Richard Nelson, Ralph Haile, and Richard Slukich had unknown persons to enter into the Thompsons' home and steal all the Thompsons' furniture, clothing, money, business tools, business records, and all other personal effects.

79. That Eddie Thompson, Jr. reported this to the Covington Police Department and the Commonwealth Attorney's office. Ex. 9.

80. That the Commonwealth Attorney, Mr. Frank Trusty, said no Judge would sign a warrant.

81. That Judge Stephens told Eddie Thompson, Jr. no warrants will be issued.

82. That from approximately September 1, 1978, to April 2, 1979, all of our personal effects were missing without our knowledge of where they were.

83. That we have been and still are being deprived of our personal property without due process of law.

84. That on April 2, 1979, we received a bill from Carson Furniture for storage

85. That neither Eddie Thompson, Jr. nor Patricia Thompson ever engaged Carson Furniture to store anything for them.

86. That on April 2, 1979, Eddie Thompson, Jr. visited Carson Furniture and spoke to Mrs. Judy Guffey.

87. That Eddie Thompson, Jr. informed Mrs. Guffey that his furniture, clothing, money, business tools, business records, and etc., had been stolen.

88. That Eddie Thompson, Jr. informed Mrs. Guffey that the list she sent to him contained only a small portion of the Thompsons' possessions.

89. That Eddie Thompson, Jr. asked Mrs. Guffey why she had sent a bill to Eddie and Patricia Thompson and how she knew whose personal effects she had. Ex. 10, 10A.

90. That Mrs. Guffey informed Eddie Thompson, Jr. that Mr. Slukich was present when she and her men took the possessions and that she was working for Mr. Slukich.

91. That Mrs. Guffey then telephoned Mr. Slukich in Eddie Thompson, Jr.'s presence.

92. That Mrs. Guffey then informed Eddie Thompson, Jr. that she could not talk to him.

93. That after the illegal foreclosure, the subsequent acts were done under color of state law because the Thompsons were Negroes, and in contravention of the 14th Amendment to the U.S. Constitution.

94. That the acts contained of herein are causing permanent and irreparable damages to the plaintiffs.

WHEREFORE plaintiffs Patricia and Eddie Thompson, Jr. pray for Judgment against defendants jointly and/or severally as follows:

1. That the defendants acting individually, through officers, agents and/or employees, threatened Eddie Thompson, Jr.'s life; invaded both plaintiffs' right of privacy by wilfully and maliciously causing, directing and/or participating in the

breaking into of plaintiffs' home stealing of all their personal possessions, all in damage to the plaintiffs in the amount of One Hundred Thousand Dollars (\$100,000).

2. That plaintiffs receive One Hundred Thousand Dollars (\$100,000) punitive damage.
3. That this court convene a three-judge court.
4. For any other relief they may be entitled.

/s/ EDDIE THOMPSON, JR.
EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

/s/ PATRICIA THOMPSON
PATRICIA THOMPSON, Pro Se
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[CERTIFICATION OMITTED]

Office - Supreme Court, U.S.
FILED

AUG 5 1983

ALEXANDER L. STEVAS,
CLERK

No. 82-2122

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Petitioners/Appellants/Plaintiffs,

vs.

RICHARD NELSON, et al.,
Respondents/Appellees/Defendants.

**REPLY IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

RICHARD S. NELSON
Attorney for Peoples Liberty Bank,
Ralph V. Haile, Richard Nelson
(pro se), James Liles, Bernard
Smith, Henry Warden
P.O. Box 1209
Covington, Kentucky 41012
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Writ of Certiorari sought by Petitioners should be denied?
2. Whether the Sixth Circuit erred in affirming the District Court's Order granting Summary Judgment in favor of Defendants/Respondents, and granting attorney fees to Respondents?

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No. 82-2122

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Petitioners/Appellants/Plaintiffs,

vs.

RICHARD S. NELSON, et al.
Respondents/Appellees/Defendants.

**REPLY IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

SUPREME COURT RULES

**Supreme Court Rule 17: Considerations Governing
Review on Certiorari**

"1. A review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter, or has decided a federal question in a way in conflict with a state court of last resort; *or has so far departed from the accepted and usual*

course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision (emphasis that of writer).

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

FEDERAL RULES OF CIVIL PROCEDURE

Rule 56 (c) — "Motion and Proceeding Thereon — The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

COUNTER-STATEMENT OF THE CASE

Respondents do not accept Petitioners' Statement of Case and respectfully direct the Court's attention to the Counter-Statement of the Case by Respondents at the Sixth Circuit level.

As clearly stated in the Order of the Sixth Circuit dated May 12, 1983, these actions as consolidated by the District Court alleged a conspiracy to deprive Petitioners of their civil rights during the foreclosure upon Petitioners' home and their subsequent eviction therefrom.

The record is further permeated with incredulous accusations and allegations of various acts of harrassment and physical abuse allegedly done by Respondents in concert to deprive Petitioners of their civil rights. One of the accusations, the alleged excessive force in effecting an arrest by police officers, was tried by a jury on October 23rd and 24th, 1980 and the jury returned for the Dedendants/ Respondents (Pets. App. 12a).

On October 29, 1980, upon Motion by Defendants/ Respondents Peoples Liberty Bank and Richard S. Nelson, the District Court granted Summary Judgment on behalf of all defendants/respondents against whom these allegations were made (Pets. app. 6a). On December 18, 1980, upon proper motion, Respondents were granted attorney's fees awards (Pets. app. 19a) and on December 12, 1980, the District Court heard and denied Petitioners' motions for reconsideration. (Pets. App. 13a, 14a, 15a).

Petitioners appealed to the Court of Appeals for the Sixth Circuit, briefs were filed and all Orders of the District Court were affirmed. (Pets. App. 1a). A Petition for Rehearing, or alternatively for rehearing en banc, was also denied by the Court of Appeals. (Pets. App. 5a). The Petition for Writ of Certiorari at Bar was then filed.

ARGUMENT

1. Whether the Writ of Certiorari Sought By Petitioners Should Be Denied?

It is clear that the Court has great discretion in granting a review on Writ of Certiorari, however, it should be noted that Rule 17 (1) (a) of the Rules of the Supreme Court of the United States offers guidelines to aid this Court in determining whether a case is proper for review. This rule requires the granting of such a writ only when there are special and important reasons therefor.

Petitioner has failed to establish that the United States Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings as to render its ruling erroneous.

The Respondents submit that Mr. and Mrs. Thompson have not met their burden; have once again improperly used the Court system as a vehicle to slander the various Defendants/Respondents and are using vexacious prattle once again to cloud the issues on appeal. The rulings below were proper and the Court should deny the Petition as being insufficient on its face.

2. Whether the Sixth Circuit erred in affirming the the District Court's Order granting Summary Judgment in favor of Defendants/Respondents, and granting attorney fees to Respondents.

Respondents have labored to filter through Petitioners' jumble of fictitious and slanderous allegations to ascertain the true issues to be considered by this Court. The basic issue, though overlooked and nearly obscured by Petitioners, is whether the Court of Appeals erred in affirming the Orders and Judgments of the District Court.

It is clear that the Court of Appeals recognized that the District Court Judge went to great lengths to give Petitioners the opportunity to support their naked allegations and accusations with proof by affidavit or otherwise. The District Judge's words again come to mind from his Order of October 29, 1980:

"The Plaintiffs have filed extensive affidavits and memoranda in support of their position. After careful scrutiny of these documents, the court must conclude the plaintiffs have no evidence to offer of either racial animus or a conspiracy to deprive the plaintiffs of their constitutional rights. It is clear that there is no dispute as to the material facts of the case. The plaintiffs would have this Court believe that the foreclosure and eviction were deliberate conspiracies against them based simply on the fact such events took place. As the record clearly discloses, the legality of the foreclosure and subsequent eviction has already been extensively litigated in state court." (Pets. App. p. 7a)

With an eye toward Federal Rule of Civil Procedure 56 (c), the District Judge clearly found nothing in the record which even remotely resembled a material issue of fact. Indeed he permitted them to file Memoranda and Affidavits to support their claims. (Pets. App. P.26a). Again, they filed affidavits and memoranda containing yet more naked allegations and accusations.

The Court of Appeals found the District Court's actions to be meticulously within the realm and spirit of Rule 56 and correctly affirmed the District Court's Order granting Summary Judgment.

The Court of Appeals was further correct in affirming the attorneys fees awards at trial level. This Court in *Christiansburg Garment Company v. E.E.O.C.*, 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed 648 (1978), set out require-

ments for an award of attorney's fees under 42 U.S.C. § 2000 E-5 (k) to the defendants when they prevail in a Civil Rights action. The language of the statute is identical to that of 42 U.S.C. § 1988. In the Supreme Court's interpretation, 42 U.S.C. § 2000 E-5 (k) is applicable to the awarding of attorney's fees to defendants under § 1988. *Lopez v. Arkansas City Independant School District*, 570 F.2d 541 (5th Cir. 1978). According to *Christiansburg*, a prevailing defendant can recover attorney fees only if the claim made by the Plaintiff was frivolous, unreasonable or groundless.

It is therefore clear that should the fact finder conclude that a plaintiff's case was frivolous or unreasonable when it was brought, then attorney fees may be awarded to defendants and charged to the plaintiffs therein. Again, the Court of Appeals was faced with the clear language of the District Judge:

"The plaintiffs would contend that the foreclosure and eviction were deliberate actions taken against them by a conspiracy of the defendant. However, the record clearly disclosed the legality of that foreclosure and subsequent eviction. *It clear (sic) that the plaintiff's case consists simply of naked allegations and nothing more and was from its inception totally frivolous.*

The Court is reluctant to assert attorney fees against individuals. However, its dockets are too overburdened to entertain vexations and harrassing litigation. The plaintiffs have filed 15 lawsuits in this court since 1977, almost all of them frivolous in nature. There are too many people who have invoked the jurisdiction of the court in good faith to permit them to be deprived of the justice to which they are entitled because of substantial amounts of the court's time are occupied by spurious lawsuits of the kind involved here." (emphasis that of writer) (Pets. App. p 22a)

The Petitioners have clearly launched a seemingly in-exhaustive campaign of abuse of process by making unsupported and untrue accusations against every human being who had the misfortune of coming in contact with the properly executed and good faith foreclosure on the Petitioners' real estate. It should be particularly noted that the foreclosure action used as a vehicle by the Petitioners to assert frivolous Civil Rights claims was and has been continually upheld as having been properly pursued and executed according to the requirements of Kentucky Law. Indeed, the Petitioners have previously brought all of their spurious allegations surrounding this foreclosure before this very Court. The barren accusations are the same — only the case number has changed. In the aforementioned Case No. 82-835 the Petitioners petition was denied. Respondents attach their Response from that case as their sole appendix.

Petitioners' position is no less spurious simply because it was brought under a different guise.

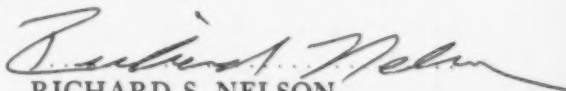
Respondents must further bring certain mis-statements of fact to the Court's attention. The DUI charges alluded to on Page 20 of Plaintiffs' brief were not dismissed. Petitioner Mr. Thompson's appeal from that conviction was dismissed thereby allowing the conviction to stand. Further the \$5,952.60 mentioned in Petitioner's affidavit on Page xi of their Petition was properly paid into the Court pursuant to Kentucky Law rather than to the Thompsons directly.

CONCLUSION

The District Court has properly applied the analysis necessary and fulfilled all procedural requirements in ruling on the Summary Judgment in Defendants/Respondents favor. Further in the Court's discretion and under the case law cited in the brief herein, it is the position of the Appellees that the Trial Judge did not err in awarding attorney's fees to the Defendants/Respondents based upon its finding that Plaintiffs/Petitioners action was frivolous and vexatious. This was the scenario facing the Court of Appeals which correctly ascertained that the Petitioners' rights were observed by the District Court and both Orders of that Court were not erroneous.

It is further asserted that the Petitioners have failed to fulfill their obligations and requirements under Rule 17 (1) (a) of this Court and therefore the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



RICHARD S. NELSON

Attorney for Peoples Liberty Bank,
Ralph Haile, Richard Nelson
(pro se), James Liles, Bernard
Smith, Henry Warden

11 West Sixth Street
P.O. Box 1209
Covington, Kentucky 41012

CERTIFICATION

I hereby certify that copies of the foregoing Reply Brief have been served upon the following by the United States Mail: Hon. Robert Carran, 314 Greenup Street, Covington, Kentucky, Hon. Stephen Wolnitzek, 502 Greenup Street, Covington, Kentucky, Hon. Stephen McMurtry, 906 City-County Building, Covington, Kentucky, Hon. Burr Travis, 30 Shelby Street, Florence, Kentucky 41042, Patricia Thompson, 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011, Eddie Thompson, Jr., 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011. This day of, 1983.

**RICHARD S. NELSON**

Attorney for Peoples Liberty Bank,
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(pro se), James Liles, Bernard
Smith, Henry Warden

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P.O. Box 1209
Covington, Kentucky 41012

APPENDIX

App. 1

No. 82-835

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners-Appellants-Defendant.

vs.

PEOPLES LIBERTY BANK

Respondent-Appellee-Plaintiff.

REPLY IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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Appellee/Plaintiff

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QUESTION PRESENTED FOR REVIEW

1. Whether the Trial Judge erred in his refusal four years after Entry of same to set aside a mortgage foreclosure Sale, Order Confirming Sale, Deeds executed pursuant thereto, and two Writs of Possession thereafter, and if so, does this constitute a violation of any Constitutionally protected right of the Appellant.

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App. 5
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

No. 82-835

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.

Petitioners-Appellants-Defendant,

vs.

PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Respondent-Appellees-Plaintiffs.

RESPONDENTS REPLY IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

CONSTITUTIONAL
and
STATUTORY AUTHORITIES

KENTUCKY REVISED STATUTES

K.R.S. 426.571 — When commissioner may convey real property — Death of party after sale — (1) real property may be conveyed by a commissioner appointed by the court:

(a) If by the judgment in an action a party be ordered to convey such property to another.

(b) If such property have been sold under a Judgment or order of the Court and the Sale confirmed.

(2) The death of a party, after a sale, does not prevent a conveyance. It shall be made, and shall have the same effect, as if he were living.

K.R.S. 426.572 — Requisites of commissioner's deed — The Deed of the Commissioner shall refer to the judgment orders and proceedings authorizing the conveyance, so that the same may be readily found.

K.R.S. 426.573 — Title passed by deed made pursuant to judgment — A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

K.R.S. 426.574 — Title passed by deed made pursuant to order of sale — A conveyance made in pursuance of a sale ordered by the Court shall pass to the grantee the title of all the parties to the action or proceeding.

K.R.S. 426.005 — Personal Judgment in action to enforce mortgage or lien — When mortgage may be enforced — (1) in an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally. (2) In an action to enforce a mortgage or other lien a sale of the property may be ordered without giving time to pay money or do other act.

K.R.S. 426.260 — Motion for Possession by purchaser; notice; judgment (1) The purchaser of land sold under execution and not redeemed after obtaining a conveyance therefor may, upon ten days' notice in writing to the defendant in the execution, whose lands have been sold, enter a motion on the docket in the circuit court of the county where the land is situated for a judgment for the possession of the land. If upon the hearing of the motion, the court is of the opinion that the purchaser is entitled to the possession, it shall render a judgment accordingly and award possession, with costs. The proceedings on the motion shall be provided in K.R.S. 418.005 to 418.015, and Rule 6.03 of the Rules of Civil Procedure.

(2) The notice referred to in subsection (1) of this section shall be in substance as follows:

"A,B to C,D notice:

"You are hereby notified that I, will on the day of, 19....., enter a motion on the Docket of the Circuit Court for a judgment for the possession of certain lands situated in County, Kentucky which lands are described as follows: (DESCRIPTION), being the same lands bought by me at a sale duly held under execution which issued from the office of the Clerk of the Court in favor of Plaintiff vs., Defendant. (See Execution Book, Execution No.). A B."

SUPREME COURT RULES

Supreme Court Rule 34 (6)

Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome irrelevant immaterial and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the Court.

Supreme Court Rule 17

1. A review on Writ on Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following while *neither controlling nor fully measuring the Court's discretion*, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from

the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

2. The same general considerations outlined above will control in respect of petitions for Writs of Certiorari to review judgments of the Courts of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on Writs of Certiorari.

KENTUCKY RULES OF CIVIL PROCEDURE

KY. RULE OF CIVIL PROCEDURE 59.05

**MOTION TO ALTER, AMEND, OR
VACATE A JUDGMENT**

A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than ten days after entry of the final judgment.

KY. RULE OF CIVIL PROCEDURE 60.02

**MISTAKE,: INADVERTANCE: EXCUSABLE
NEGLECT: NEWLY DISCOVERED
EVIDENCE: FRAUD, etc.**

On motion, a court may upon such terms as are just, relieve a party of his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertance, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds, (a), (b), and (c) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule does not affect the finality of the judgment or suspend its operation.

COUNTERSTATEMENT OF CASE

In light of the deluge of mis-statements of facts in Petitioner's Statement of the Case, Respondent must clarify the actual facts.

In August, 1976 Appellee filed a suit against Appellants upon their mortgage Promissory Notes and asked for foreclosure and sale of certain property mortgaged by Appellants to Appellee incident to the Promissory Note and the proceeds of such apply to satisfy any judgment rendered against them in the foreclosure action. App. pp. 1a-5a.

The case was referred to the Master Commissioner of the Kenton Circuit Court who took proof under oath in an evidentiary hearing on March of 1977. App. pp. 6a-10a.

Appellants filed objections to the Master Commissioner's Report, the Kenton Circuit Court overruled those objections, confirmed the report on March 18, 1977 and entered its Judgment and Order of Sale on April 21, 1977. App. pp. 11a-16a.

On June 21, 1977, the Order of Sale was carried out, the Master Commissioner filed his report of sale (App. pp. 17a-19a) and moved to confirm same. The sale was confirmed on June 27th and final report of the Master Commissioner was confirmed on July 18, 1977. Appellee being the highest bidder at the sale, a Deed was issued by the Master Commissioner with Court approval vesting title in the real estate in the name of the Appellee.

No Appeal was taken from that final report nor from the Judgment and Order of Sale entered April 21, 1977.

In September of 1977 Appellee moved for a Writ of Possession pursuant to K.R.S. 426.260 (App. pp. 20a-23a)

and such Writ was issued October 19, 1977. Appellants appealed the issuance of such Writ. On February 7, 1978, the Kentucky Court of Appeals granted Appellee's Motion to Dismiss the Appeal (App. p. 24a) and on March 30, 1978 denied Appellant's Motion to Reconsider. (App. p. 25a)

With total inaderance to procedural rules, while their Motion for the Court of Appeals to reconsider its dismissal was pending, on March 8, 1978, Appellants filed a Motion in the Kenton Circuit Court under C.R. 60.02 to vacate and set aside the Order confirming the Master Commissioner's final report and the Writ of Possession "on the grounds that the foreclosures were procured by fraud and discrimination . . . and the Writ of Possessions were defective and wrongfully issued" (App. pp. 26a-30a) These motions were overruled by the Kenton Circuit Court on March 21, 1978. On March 28, 1978 Appellants filed a Motion to "Alter and Amend Judgment" and a Motion for the Kenton Circuit Judge to disqualify himself, same being overruled, appealed and finally dismissed on January 14, 1978.

Appellee again moved for a Writ of Possession as Appellants had moved back into the property now owned by Appellee. (App. pp. 31a-32a)

On July 12, 1978 the Writ and Order of Possession were issued by the Kenton Circuit Court and executed on July 19, 1978 by the Kenton County Sheriff. (App. pp. 33a-36a)

On May 1, 1981, over four years after the non-appealed Judgment and Order of Sale and deed to Appellee and almost three years after the second Writ of Possession was executed by the Kenton County Sheriff, Appellants filed Motions in the Kenton Circuit Court to set aside the mortgage foreclosure sale, the Order confirming that sale, to cancel the deeds made pursuant thereto, and to set aside

the Writs of Possession. Their motions were overruled and the present Appeal taken. (App. pp. 37a-38a)

ARGUMENT

Respondent finds the temptation to respond to the mis-statements and allegations in Petitioner's Brief nearly over-whelming.

However, in lieu thereof, Respondent believes it is more appropriate and in the interest of justice to address the actual issue before this Court, something Petitioners have chosen to avoid. The issue is simply whether the Trial Judge erred four years later in overruling Petitioners' motion to set aside various orders pertaining to a foreclosure action thereby violating any constitutional rights of Petitioners.

First, the Respondent must assert that Petitioners have subjected all parties hereto to a frivolous Appeal by saturating their Petition with "burdensome, irrelevant, immaterial, and scandalous matter in a blatant attempt to cloud the very clear issue before this Court.

This has been the very nature of Petitioners' appellate process. They simply reiterate the same falsehoods and naked, unsupported allegations in every brief they have filed regardless of the pertinent issues.

The Court of Appeals of Kentucky clearly recognized this in its opinion wherein it was stated:

"Although we recognize the extent to which the Appellants must have labored in an attempt to present their case to this Court, the unfortunate result is that the Brief is devoid of anything of Legal Relevance."
(Petitioners App. p. 9a)

It is therefore asserted that Petitioners' Brief should be disregarded and stricken by the Court. Sup. Ct. Rule 34(6).

In the actual issue at hand, in capsule form, the Trial Judge's position was clear. That Court was faced with a Motion to Vacate and/or Amend or Alter various Orders arising out of a foreclosure on Petitioner's home, a foreclosure based on a flagrant arrearage on Petitioners' part, (an arrearage found by the Trial Court of absolutely no payments on principal from January 1, 1974 to March 10, 1977) (App. p. 14a) and properly prosecuted pursuant to Kentucky Law. KRS 426.571; KRS 426.005; KRS 426.573; KRS 426.574; *Pemberton v. Harden*, Ky., 80 S.W.2d 589 (1935).

Adding to the Trial Judge's task was the fact that the Petitioners had filed this motion four years late as Kentucky Law required as unsuccessful litigant to bring his or her motion to alter, amend, or vacate a judgment not later than ten (10) days after entry of the final judgment. Ky. C.R. 59.05. The Final Judgment at issue before the Trial Court in 1981 was the Order confirming the final report of the Master Commissioner entered July 18, 1977.

Further, the Trial Judge applied Ky. C.R. 60.02 to the allegations made by Petitioners and found no new grounds to exist, no newly discovered evidence, or any other element under Ky. C.R. 60.62 pursuant to which relief could be granted. Therefore the Trial Judge was faced with the same allegations as those which this Court is now faced; allegations which have been continually ruled on by Kentucky and Federal Courts (cf. *Patricia Thompson and Eddie Thompson, Jr. vs. Peoples Liberty Bank and Trust Co.* # 80-1358) who found nothing to justify Plaintiff's four year delay in bring their motion or even

any merit in their arguments. He clearly did not abuse his discretion in overruling those motions.

Whether the Trial Judge's Order overruling Plaintiff's motions is an act which may be seen as a potential violation of any protected constitutional right of the Plaintiffs is another element of the issue at Bar which Petitioners seem to ignore.

Under the Rules of this Court, there are guidelines which are designed to aid the Court in using its discretion in reviewing writs of certiorari. Sup. Crt. Rule 17 (1) (a) is of no relevance, dealing solely with petitioners from Federal Courts.

Sup. Crt. Rule 17 (b) and (c) are further unfulfilled by the Petition at Bar as there has been no federal question ruled on by any state court below. Indeed, the Order of the Trial Court at issue herein was one of pure procedure and violated no rights of the Petitioners, Federal or otherwise.

It is clear that the Petition at Bar raises no Federal question and is serving merely as a vehicle for yet more of Petitioner's slanderous and unsupported allegations against the Respondent herein.

CONCLUSION

It is clear that the Trial Judge did not err in overruling Petitioners motions to amend, alter or vacate, and that this Order violated no constitutional right of the Plaintiffs, thereby raising no federal question for review. The within matter should be dismissed and the Petition for Writ of Certiorari denied.

Respectfully submitted,

RICHARD S. NELSON

Attorney for Respondent/
Appellee/Plaintiff

11 West Sixth Street
P.O. Box 1209
Covington, Kentucky 41012
(606) 291-1511

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply in Opposition to Petition for Writ of Certiorari and Appendix have been served by the United States Mail upon the following: Patricia Thompson, 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011; and Eddie Thompson, Jr., 736 Highland Avenue, P.O. Box 1221, Covington, Kentucky 41011, on this the *14th* day of January, 1983.



.....
RICHARD S. NELSON

Attorney for Respondent/ Appellee
Plaintiff

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APPENDIX

KENTON CIRCUIT COURT
DIVISION NO. THIRD DIV.

No. 31053

THE PEOPLES LIBERTY BANK AND
TRUST COMPANY,

Plaintiff,

VS.

EDDIE THOMPSON, JR., a/k/a
E. J. THOMPSON, JR.,
736 Highland Avenue, Covington, Kentucky,

and

PATRICIA ANN THOMPSON,
736 Highland Avenue, Covington, Kentucky,
Defendants.

COMPLAINT

[Filed August 27, 1976]

Comes now the plaintiff and for its causes of action,
states as follows:

COUNT I

1. Plaintiff is a Kentucky banking corporation authorized to bring suit in its corporate capacity.

2. On September 13, 1974, defendants executed and delivered unto the plaintiff their promissory note in the sum of \$21,000.00 plus interest thereon at $9\frac{1}{2}\%$ per annum payable in monthly installments of \$220.00 commencing October 10, 1974 until paid. Said note was executed for good and valuable considerations and a copy of same is attached hereto and incorporated by reference herein.

3. Simultaneous with the execution of said promissory note, defendants executed and delivered unto the plaintiff a mortgage as surety for said promissory note upon the following described real estate situate in the City of Covington, Kenton County, Kentucky and more particularly as follows:

Being a part of Lot # 10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

Said mortgage duly recorded in the Kenton County Clerk's records at Covington, Kentucky in Mortgage Book 766 at Page 46-49 and represents a first lien upon said real estate. A copy of said mortgage is attached hereto and incorporated by reference.

4. Plaintiff further states that defendants have failed to make any payments whatsoever upon principal pursuant to said promissory note, have made no payments of interest since May 12, 1975 and their remains presently due and

payable the sum of \$19,478.38 plus interest thereon at 9½% per annum from May 10, 1975 until paid plus attorney fees as set forth in said promissory note.

5. Said real estate is a city lot and cannot be divided or partitioned without materially affecting it's value.

COUNT II

6. Plaintiff reiterates and reaffirms all of the allegations contained in the first and last paragraphs of Count I hereof.

7. On February 25, 1972, defendants executed and delivered, for good and valuable considerations, their promissory note unto the plaintiff in the sum of \$9,000.00 payable at 7% per annum monthly with the first payment being due and payable in the month of March 1972. A copy of said promissory note is attached hereto and incorporated by reference herein.

8. Simultaneous with the execution of said promissory note, defendants further executed and delivered unto the plaintiff a first mortgage upon the following described real estate situate in the City of Covington, Kenton County, Kentucky as surety for said promissory note:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width

the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

9. Said mortgage is commonly known as an "open end" mortgage and pursuant to said open end provision, defendants further borrowed from the plaintiff an additional sum of \$1,400.00.

10. As to the obligation of \$9,000.00, defendants have failed to make any payments thereon toward principal since January 2, 1974, they have failed to pay any interest since June 30, 1976 and these is presently due and owing the sum of \$6,836.38 plus interest at 7% per annum from June 30, 1976 until paid.

11. Pursuant to the open end provisions previously mentioned, the last payment made thereon was on August 9, 1976, the last payment immediately prior thereto was May 17, 1976 and there is presently due and owing thereupon the sum of \$1,300.00 plus interest upon said sum at the rate of 8½% per annum from July 1, 1976 until paid, said open end provisions having a different interest rate than that contained in the original note.

WHEREFORE, plaintiff prays the Court as follows:

1. Pursuant to Count I hereof, for judgment against the defendants, jointly and severally, in the sum of \$19,478.38, plus interest at 9½% per annum from May 10, 1975 until paid, for attorney fees, and for it's court costs herein expended.

2. Pursuant to Count II hereof, for judgment against the defendants, jointly and severally, in the sum of \$6,836.39, plus interest at 7% per annum from June 30, 1976 until paid, for judgment on the sum of \$1,300.00, plus interest therein at 8½% per annum from July 1, 1976 until paid and for it's court costs herein expended.

3. That the plaintiff be adjudged to have a first and superior lien upon the real estate of the defendants as herein described and that the real estate here involved be sold by the Master Commissioner of this Court in order to satisfy the judgments rendered herein against the defendants.

4. For all other proper relief.

RICHARD S. NELSON

Attorney for the Plaintiff

11 West Sixth Street

Covington, Kentucky 41011

(606) 291-1511

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KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK AND
TRUST COMPANY,

Plaintiff,

VS.

EDDIE THOMPSON, JR., ETC., ET. AL.,

Defendants.

REPORT OF THE MASTER COMMISSIONER

[Filed April 5, 1977]

This case was referred to the Master Commissioner for hearing which was held on Thursday, March 10th, 1977, at 10:00 A.M. At that time the plaintiff was present represented by its attorney, Jonathan A. Mason, Esq., and the defendants were present representing themselves. From the testimony taken at that hearing, the pleadings and exhibits filed in this case, the Master makes the following report.

1. The defendants, Eddie Thompson, Jr., a/k/a E. J. Thompson, Jr. and Patricia Ann Thompson, husband and wife, hold the record title to the following described property located in Covington, Kenton County, Kentucky:

Being a part of Lot # 10 in Lee's Subdivision as shown on Copied and Restored Plat # 330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

2. On or about September 13, 1974, these defendants executed and delivered to the Peoples Liberty Bank their promissory note in the amount of \$21,000.00, bearing interest at the rate of 9-1/2 per-cent per annum, the first payment under said note being due on October 10th, 1974, and thereafter until paid. At the same time, they executed and delivered to said bank a mortgage on the above described property. These instruments, among other things, provided for regular monthly payments to retire the indebtedness and in the event that payments should fall in default, the bank would have the right to declare the entire balance due and file suit for collection therefor. The Master finds that no payments have been made on this indebtedness since May 12th, 1975, and the balance that is now due and owing as of September 16th, 1975 is \$19,478.38, together with interest thereon at the rate of 9-1/2 per-cent per annum from that date until date of judgment and thereafter at the rate of 8 per-cent per annum. By virtue of the note and mortgage aforesaid, the plaintiff in this case has a first lien on the above described property, ad valorem taxes and Court costs excepted.

3. The above described real estate is a city lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

4. The defendants also hold the record title to the following described real estate located on Highland Avenue, Kenton County, Kentucky:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. On or about February 25th, 1972, these defendants executed and delivered to the plaintiff their promissory note in the amount of \$9,000.00 with interest at 7 per-cent per annum due and payable from March, 1972 until paid. In addition to the note, these defendants also executed and delivered to the plaintiff a mortgage on the above described real estate. These instruments provided for regular monthly payments to retire the indebtedness and in the event they should fall in default, the plaintiff would have the right to declare the entire balance due and payable. The Master finds that the last payment made on the principle amount of this indebtedness was January 2nd, 1974, and the last payment on the interest on this indebtedness was June 30th, 1976. The balance that is due now is \$6,836.39 with interest thereon at the rate of 7 per-cent

per annum from June 30th, 1976 until paid. By virtue of these instruments the plaintiff has a first lien on the above described property, Court costs and ad valorem taxes excepted.

6. The property described above consists of a lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

7. The evidence adduced at the hearing indicates that the additional sums claimed due in paragraphs nine and eleven of plaintiff's complaint have previously been satisfied in full and are no longer owed by the defendants.

8. At the trial of this case, the defendant, Eddie Thompson, Jr., was permitted to testify in narrative form and was granted free latitude to tell his entire story about these transactions. From that testimony it appears to the Master that he and the plaintiff had certain misunderstandings in their dealings and while some confusion may have been added to the negotiations in this case, none of the defendant's testimony constitutes a legal defense to the plaintiff's claim, and the Master must conclude that the defendants have failed to establish the allegations contained in their pleadings by a preponderance of the evidence.

9. This case now stands ready to be submitted for a judgment and Order of Sale.

RECOMMENDATION

The Master recommends that a judgment be entered in this case in conformity with his report as set out above, that among other things, the two parcels of property de-

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scribed herein be sold as a whole and the proceeds will be distributed as set out in this report.

Respectfully submitted,

/s/ WILLIAM J. DEUPREE, JR.
Master Commissioner

Copies to:

Jonathan A. Mason, Esq.

E. J. Thompson, Jr. and Patricia Ann Thompson

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KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., a/k/a
E. J. THOMPSON, JR. and
PATRICIA ANN THOMPSON,

Defendants.

JUDGMENT AND ORDER OF SALE

(Filed April 21, 1977)

This cause having been referred to the Master Commissioner of this Court for hearing, testimony having been taken at the hearing held on March 10, 1977, the parties being present, thereafter the Master Commissioner filed his Report with this Court; the Master Commissioner having filed Motion requesting confirmation of this Report, the defendants having filed objections to the Report of the Master Commissioner, and the Court having reviewed the Report of the Master Commissioner and the objections thereto of the defendants, and thereafter adopting the Report of the Master Commissioner;

NOW, THEREFORE, the Court finds as follows:

1. The defendants, Eddie Thompson, Jr., a/k/a E. J.

Thompson, Jr. and Patricia Ann Thompson, husband and wife, hold the record title to the following described property located in Covington, Kenton County, Kentucky:

Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the West side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

2. On or about September 13, 1974, these defendants executed and delivered to The Peoples Liberty Bank their promissory note in the amount of \$21,000.00, bearing interest at the rate of $9\frac{1}{2}$ per-cent per annum, the first payment under said note being due on October 10th, 1974, and thereafter until paid. At the same time, they executed and delivered to said bank a mortgage on the above described property. These instruments, among other things, provided for regular monthly payments to retire the indebtedness and in the event that payments should fall in default, the bank would have the right to declare the entire balance due and file suit for collection therefor. The Master finds that no payments have been made on this indebtedness since May 12th, 1975, and the balance that is now due and owing as of September 16th, 1975 is \$19,478.38, together with interest thereon at the rate of $9\frac{1}{2}$ per-cent per annum from that date until date of judgment and thereafter at the rate of 8 per-cent per annum. By virtue of the note and mortgage aforesaid, the plaintiff in this case has a first lien on the above described property, ad valorem taxes and Court costs excepted.

3. The above described real estate is a city lot with a building constructed thereon and is indivisible and incapable of being divided without materially impairing its value and if sold, it must be sold as a whole.

4. The defendants also hold the record title to the following described real estate located on Highland Avenue, Kenton County, Kentucky:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the division line between said Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

5. On or about February 25th, 1972, these defendants executed and delivered to the plaintiff their promissory note in the amount of \$9,000.00 with interest at 7 percent per annum due and payable from March, 1972 until paid. In addition to the note, these defendants also executed and delivered to the plaintiff a mortgage on the above described real estate. These instruments provided

for regular monthly payments to retire the indebtedness and in the event they should fall in default, the plaintiff would have the right to declare the entire balance due and payable. The Master finds that the last payment made on the principle amount of this indebtedness was January 2nd, 1974, and the last payment on the interest on this indebtedness was June 30, 1976. The balance that is due now is \$6,836.39 with interest thereon at the rate of 7 per-cent per annum from June 30th, 1976 until paid. By virtue of these instruments the plaintiff has a first lien on the above described property, Court costs and ad valorem taxes excepted.

6. The property described above consists of a lot with a building constructed thereon and is indivisible and incapable of being divided with out materially impairing its value and if sold, it must be sold as a whole.

Based upon the foregoing Findings,

IT IS NOW, THEREFORE, ORDERED AND ADJUDGED that the plaintiff, The Peoples Liberty Bank and Trust Company of Covington, Kentucky, recover of the defendants, Eddie Thompson, Jr., a/k/a E. J. Thompson, Jr. and Patricia Ann Thompson, jointly and severally, pursuant to the promissory note dated September 13, 1974, the sum of \$19,478.38, together with interest thereon at the rate of $9\frac{1}{2}$ per-cent per annum from September 16, 1975 until April 18, 1977 and thereafter at the rate of 8 per-cent per annum until paid, and its Court costs herein expended.

IT IS FURTHER ORDERED AND ADJUDGED that said plaintiff recover of said defendants, jointly and severally, pursuant to the promissory note dated February 25, 1972, the sum of \$6,836.39, plus interest thereon at

7 per-cent per annum from June 30, 1976 until paid and its Court costs herein expended.

IT IS FURTHER ORDERED AND ADJUDGED that the real estate described herein is indivisible and cannot be divided without materially impairing its value and should be sold as a whole.

IT IS FURTHER ORDERED AND ADJUDGED that the real estate be sold subject to any unpaid ad valorem taxes for the year 1977 and any delinquent taxes.

IT IS FURTHER ORDERED AND ADJUDGED that the Judgment of the plaintiff be considered a first and superior lien upon the real estate herein described and inferior only to the costs of this action.

IT IS FURTHER ORDERED AND ADJUDGED that the Master Commissioner of this Court sell at public sale on a day to be fixed by him, the real estate described herein at the door of the Courthouse in the City of Covington, Kentucky, after advertising the time, place and terms of said sale, by written notices posted, one at the door of the Courthouse, one in the vicinity of the real estate and two in public places in the City of Covington, Kentucky, for fifteen days next preceding the day of sale, after advertising, also by publication in a newspaper of general circulation for three (3) times. Said publication to be once a week for three (3) successive weeks, so made that the final publication will appear not later than two days before the day upon which the sale will occur, in compliance with K.R.S. 424. Said notice and publication will set out the description of said real estate. The sale shall be made to the highest and best bidder or bidders and shall be on a credit of four, eight and twelve months from day of sale.

For the purchase price, the Master Commissioner will take from the purchaser or purchasers, bonds in three (3) equal installments with good and sufficient surety or sureties, bearing interest from date of sale and payable to himself as Master Commissioner and at the time of the sale, the Master will require each purchaser to deposit \$25.00 with said Master to be applied to any expense occasioned by any default of said purchaser.

The Master will report.

D. J. GOODENOUGH
JUDGE, KENTON CIRCUIT COURT

[CERTIFICATION OMITTED]

App. 33

17a

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLES LIBERTY BANK & TRUST COMPANY,
Plaintiff,

vs.

EDDIE THOMPSON, JR., ETC., ET AL.,
Defendant.

MASTER COMMISSIONER'S REPORT OF SALE

Pursuant to the judgment and order of sale entered herein May 27th, 1977 the Master Commissioner advertised the time, terms and place of sale of the real estate hereinafter described by written notices posted, one at the Court House door, one in the immediate vicinity of the property ordered to be sold, and two at other public places in the City of Covington for fifteen days next preceeding the day of sale and further by publication in the Kentucky Post, the official newspaper of Covington, Kentucky, for three weeks next preceding the day of sale; and, after having had the said property appraised under oath by W. Joseph Kennedy and William C. Beuttel, two disinterested, intelligent housekeepers of said county, not related to any party to this action, whose appraisement is in writing and filed herewith, the Master did on the 21st day of June, 1977, expose at public vendue, at the Court House door in said city, on the terms decreed, said prop-

erty described in said judgment notices and publications, to wit:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the dividing line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

The Master Commissioner offered the above described real estate for sale and the Peoples Liberty Bank and Trust Company of Covington, Kentucky, bid therefor the sum of \$14,500.00, and no one making a higher or better bid, the Master Commissioner sold said real estate to the Peoples Liberty Bank and Trust Company of Covington, Kentucky for the sum of \$14,500.00. The property was appraised for \$16,000.00. The purchasers paid cash.

Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Rob-

bins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

The Master Commissioner offered the above described real estate for sale and the Peoples Liberty Bank and Trust Company of Covington, Kentucky, bid therefor the sum of \$5,500.00 and no one making a higher or better bid, the Master Commissioner sold said real estate to the Peoples Liberty Bank and Trust Company of Covington, Kentucky for the sum of \$5,500.00. The plaintiff's purchaser has heretofor recovered a judgment in this case in excess of its bid and will apply to the Court for the proper orders granting it a credit. With this in mind, they paid to the Master Commissioner only the Court costs incurred herein. The property was appraised for \$7,000.00.

Respectfully submitted,

WILLIAM J. DEUPREE, JR.
Master Commissioner

App. 36

20a

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

MOTION AND NOTICE

Comes now the plaintiff, through counsel, and pursuant to KRS 426.260 moves for an Order or Writ of Possession of the two (2) parcels of real estate involved in these proceedings and gives notice as follows to the defendants: TO EDDIE THOMPSON, JR. AND PATRICIA THOMPSON, NOTICE:

You and each of you are hereby notified that the undersigned will, as attorney for the plaintiff herein, on the 17 day of October, 1977, ask that the within Court give a Judgment and Writ for the plaintiff to be placed in possession of the two (2) parcels of real estate involved in this action, being commonly known as 736 Highland Avenue, Covington, Kentucky and the northwest corner of Greenup and Robbins Streets, Covington, Kentucky.

RICHARD S. NELSON
Attorney for Plaintiff

P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

App. 37

21a

NOTICE

Notice is hereby given that the above styled motion will be brought on for hearing before the Kenton Circuit Court, Third Division, on, the 17 day of October, 1977 at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard.

RICHARD S. NELSON

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

WRIT AND ORDER OF POSSESSION

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within ten (10) days verifying compliance with this Order:

Commonly known as 736 Highland Avenue, Covington, Kentucky and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and

Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

Commonly known as the northwest corner of Greenup and Robbins Streets, Covington, Kenton County, Kentucky and being more particularly described as follows:

Being a part of Lot #10 in Lee's Subdivision as shown on Copied and Restored Plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows:

Situate at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending back westwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

DATED at Covington, Kenton County, Kentucky, this 19 day of October, 1977.

D. J. GOODENOUGH
JUDGE

App. 40

24a

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. CA-2149-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

v.

THE PEOPLES LIBERTY BANK AND
TRUST COMPANY,

Appellee.

APPEAL FROM KENTON CIRCUIT COURT

Nos. 31053 and 33430

ORDER GRANTING MOTION TO DISMISS APPEAL
BEFORE: MARTIN, CHIEF JUDGE, WILHOIT, and
REYNOLDS, JUDGES.

The Court, having considered the motion to dismiss the appeal, and having further considered the response thereto, and being of the opinion that as the notice of appeal was not filed within twenty days of the date of the order confirming the final report of the Master Commissioner, this appeal should be, and hereby is, DISMISSED.

ENTERED: February 7, 1978.

JUDGE, COURT OF APPEALS

App. 41

25a

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. CA-2149-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Appellants,

v.

PEOPLE'S LIBERTY BANK,
Appellee.

APPEAL FROM KENTON CIRCUIT COURT

ORDER DENYING MOTION TO RECONSIDER

BEFORE: MARTIN, CHIEF JUDGE, WILHOIT, and
REYNOLDS, JUDGES.

The Court, having considered the motion for rehearing which is treated as a motion to reconsider, and being otherwise sufficiently advised, ORDERS that the motion be and is hereby DENIED. The Clerk of this Court is hereby ORDERED to return the file to the Kenton Circuit Court forthwith.

ENTERED: March 30, 1978.

JUDGE, COURT OF APPEALS

App. 42

26a

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

PEOPLE'S LIBERTY BANK AND TRUST CO.
Plaintiff,

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,
Defendants.

MOTION

- (1) FOR RELIEF FROM ORDER CONFIRMING THE
FINAL REPORT OF THE
MASTER COMMISSIONER, AND
(2) FROM ORDER GRANTING
WRIT OF POSSESSION
(3) FOR LEAVE TO FILE COPY OF
APPRAISAL REPORT

Pursuant to Cr. 60.02, defendants herein move the court to vacate and set aside the order confirming the final report of the Master Commissioner entered against defendants in this cause on July 18, 1977, and the order granting plaintiff a Writ of Possession on October 19, 1977, on grounds that the foreclosures were procured by fraud and discrimination; and the Writ of Possession was defective and wrongfully issued as more fully appears from the appraisal of 736 Highland Avenue and the record.

There can be no valid sale without a valid appraisal. *K.R.S. 426.200 (3) Adams v. Napier 334 S.W. 2d 915.*

Defendants further move the court for an order granting leave to file copy of appraisal of 736 Highland. (Exhibit A) Mr. Grayson, Sr. had this appraisal made for People's Liberty Bank sometime in the summer of 1975. Mr. Grayson, Sr. refused to give defendant's a copy of the appraisal made of 1013-15 Greenup Street.

The purported Writ of Possession issued on October 19, 1977 is void as the court entered its final order on July 18, 1977. "A trial court loses jurisdiction over its judgment 10 days after the signing and entry thereof, unless a motion is filed under CR 59.02. A judgment entered after expiration of such 10-day limit is void, an appeal therefrom must be dismissed, leaving the first judgment in effect." *Yocum v. Oney* 532 S.W. 2d 15.

Where an illegal or wrongful sale of property is made under a power of sale contained in a mortgage or deed of trust, mortgagee or trust deed mortgagee will be held liable to mortgagor for damages sustained. *Owens v. Grimes* 539 S.W. 2d 387.

PATRICIA THOMPSON, Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
Covington, Kentucky 41011
606/491-6278

CERTIFICATION

I certify that a copy of the foregoing Motion has been served by the United States mail upon:

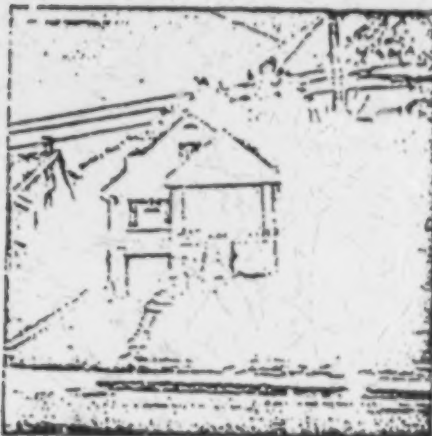
Mr. Richard Nelson, attorney for plaintiff, and The Court of Appeals this 8 day of March, 1978.

PATRICIA THOMPSON, Pro Se

PROFESSIONAL RESIDENTIAL

EXHIBIT

JAL



1st. Value: 100%
 Ins. Value: As Dep.
 No. of dwelling units: 26,600
 Masonry: of Frame
 Final Estimate of Market Value: 26,600
 ADDRESS: 736 Highland Avenue
 CITY/COUNTY: Covington BLK LOT
 SUBDIVISION:
 SKETCH EXTERIOR PLAN—SHOW DIMENSIONS

NEIGHBORHOOD DATA

PROXIMITY OF PROPERTY TO:	TRENDS:	INC. SEC. STAR.	GENERAL ECONOMICS:
Less 1/4 mi. to 1 mi. +	Income Level		TYPICAL RESIDENT'S GROSS INC. \$10,000 1/yr.
Downtown Area	Population		TYPICAL OCCUPATION White & Blue Collar
Local Shopping	Housing Units		TYPICAL PROPERTY VALUES
Grammar School	Density Pop./Unit		Single Family Residences 15,000 20,000 25,000 30,000 35,000 40,000 45,000 50,000 55,000 60,000 65,000 70,000 75,000 80,000 85,000 90,000 95,000 100,000 105,000 110,000 115,000 120,000 125,000 130,000 135,000 140,000 145,000 150,000 155,000 160,000 165,000 170,000 175,000 180,000 185,000 190,000 195,000 200,000 205,000 210,000 215,000 220,000 225,000 230,000 235,000 240,000 245,000 250,000 255,000 260,000 265,000 270,000 275,000 280,000 285,000 290,000 295,000 300,000 305,000 310,000 315,000 320,000 325,000 330,000 335,000 340,000 345,000 350,000 355,000 360,000 365,000 370,000 375,000 380,000 385,000 390,000 395,000 400,000 405,000 410,000 415,000 420,000 425,000 430,000 435,000 440,000 445,000 450,000 455,000 460,000 465,000 470,000 475,000 480,000 485,000 490,000 495,000 500,000 505,000 510,000 515,000 520,000 525,000 530,000 535,000 540,000 545,000 550,000 555,000 560,000 565,000 570,000 575,000 580,000 585,000 590,000 595,000 600,000 605,000 610,000 615,000 620,000 625,000 630,000 635,000 640,000 645,000 650,000 655,000 660,000 665,000 670,000 675,000 680,000 685,000 690,000 695,000 700,000 705,000 710,000 715,000 720,000 725,000 730,000 735,000 740,000 745,000 750,000 755,000 760,000 765,000 770,000 775,000 780,000 785,000 790,000 795,000 800,000 805,000 810,000 815,000 820,000 825,000 830,000 835,000 840,000 845,000 850,000 855,000 860,000 865,000 870,000 875,000 880,000 885,000 890,000 895,000 900,000 905,000 910,000 915,000 920,000 925,000 930,000 935,000 940,000 945,000 950,000 955,000 960,000 965,000 970,000 975,000 980,000 985,000 990,000 995,000 1000,000
High School	Ave. Prop. Values		2-12 Family & Condominiums
Expressway Access	Ethnic Compos.	changing	Condominium & Multi-Family
Occur:	Remaining Economic Life	yr.	Non-Residential Uses
TYPE OF DEVELOPMENT: One, Few, Many Builders.	UNITS PER YR.		TYPICAL FINANCING: CONV. INS. L.A./M.

SITE DATA

LOT SIZE	41	146				Corner	Inside
ZONING	Res					HIGHEST AND BEST USE OF SITE: Present or	
IMPROVMTS.	Asphalt St.	Conc. St.	Curbs	Sidewalks	Alley	Driveway	
UTILITIES	Gas	Elect.	Water	San. Sewer	Storm Sewer	Well	Septic
EASEMENTS (DETRIMENTAL TO VALUE):	Party Wall	Driveway	Sidewalk	Other			

Describe Easements:

BUILDING DATA

1 Family 8 ACT 8 EFF

EXTERIOR	Good Avg. Poor	INTERIOR	Good Avg. Poor
FOUNDATION	Conc. X Brick X	WALLS & CEIL	Drywall X Plaster X
	Basmt. X Crawl X	FLOOR	Conc. X Tile X
WALL CONST.	Frame X Veneer X	CENT. HTG.	Air X Water X
WINDOWS	Metal X Wood X	FUEL	Gas X Oil X
ROOFING	Asphalt X Shl. Up X	FUR/BOIL	Age X MHW X
SIDING	Wood X Alum. X	ELECT.	200 Amp Fuse X
CAR-CAR PT.	Frame X Veneer X	BATH(S)	Age X FLR/walls X
/ Cars	Do'd. X Att'd. X	BATH-FIX(S)	Lave. 1 W.C.s 1
OTHER	Gutters X Porch X	KITCHEN	Age X Ch. & St. X
REMARKS:	Family room in basement-paneled tile floor, electric door lift.	OTHER	Furpl. X

FLOOR	ROOMS	LIVING	DINING	KITCHEN	BEDRM	CLOSET	BATH	APTS.	DEPRECIATION	IF NOT TYPICAL, DESCRIBE
BASEMENT									PHYSICAL DETERIORATION	
1st FLOOR									FUNCTIONAL OBSOLESCENCE	
2nd FLOOR									ECONOMIC OBSOLESCENCE	
3rd FLOOR										
ATTIC										
TOTAL										

DEFINITION OF MARKET VALUE: "Market value contemplates the consummation of a sale and the payment of the purchase price by the buyer to the seller."

1. buyer and seller are free of undue stimulus and are motivated by no more than the reactions of typical buyers
2. both parties are well informed or well advised and act prudently, each for what he considers his own best interest,
3. a reasonable time is allowed to test the market, and
4. payment is made in cash or in accordance with financing terms available in the community for the property type in its locale."

"Society of Real Estate Appraisers"

COST APPROACH TO VALUE:

LAND VALUATION—(ZONED: Res.) 41 50 2050

+ SITE IMPROVEMENTS: "AS IS" driveway, landscaping, etc. 500

Other: _____

TOTAL \$ 2,550

BUILDING VALUATION—REPLACEMENT COST

BLOC.	AREA	UNIT COST	COST NOW	ACT. AGE	EFF.	PRV.	DEPRECIATION FUNE. ECON.	TOTAL	DEP. VALUE
MAIN	882	30.00	26,460	8	8	103			23,814
Patio & Porch	84								750
Garage	259								500
Basement	623								3,000

(paneled & finished walls & tile floors)

24,014

28,564

INDICATED VALUE from COST APPROACH

MARKET DATA APPROACH TO VALUE:

ADDRESS OF COMPARABLE SALES	1A	1B	1C	1D	1E	1F
2200 Topping Lane	746 Topping Lane	516 Brighton				
SALE PRICE OF COMPARABLE	\$30,900	\$25,000	\$19,250			
ADJUSTMENT FOR DATE OF SALE	(-)	(+)	(-)			
AGE & OVERALL CONDITION	2000	2500	2000			
SIZE & UTILITY		500	2000			
MODERN KITCHEN, BATH, HEATING		500				
GARAGE & PORCHES			500			
SITE & LOCATION	1500	1000				
OTHER	800					
SUB-TOTALS	\$4300	\$2000	\$2500			
TOTALS	\$24,600	\$25,000	\$24,750			

INDICATED VALUE from MARKET APPROACH

INCOME APPROACH TO VALUE:

No Rental Figures Available in Area

ESTIMATED MONTHLY RENTAL: \$ _____ X GROSS MONTHLY MULTIPLIER () =

INDICATED VALUE from INCOME APPROACH

MARKETABILITY "AS IS": Good ☒ Average ☐ Fair ☐ Poor ☐

REMARKS:

CORRELATED FINAL ESTIMATE OF MARKET VALUE

AS OF 10/19 \$ 26,600

I (We) certify that to the best of my (our) knowledge and belief the facts and data used herein are true and correct, and that I (we) personally inspected the property from the inside and the outside, and that I (we) have no undisclosed interest, present or prospective therein.

[Signature]
Appraiser

MARKETABILITY "AS REPAIRED": Good ☐ Average ☒ Fair ☐ Poor ☐

NEEDED REPAIRS	CURABLE ITEMS	EST. COST

COR. ESTIMATE OF MARKET VALUE \$ _____

EST. CONTRIBUTION TO MARKET VALUE FROM REPAIRS + _____

CORRELATED ESTIMATE OF MARKET VALUE, AS REPAIRED:

Our (Market data approach) indicates a value of \$26,600. This sale was most similar in age, utility and size, and located in a close proximity. No rentals for single family dwellings were available. Income approach not applicable.

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31a

KENTON CIRCUIT COURT
THIRD DIVISION

No. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al.,

Defendants.

MOTION AND NOTICE

[Filed June 14, 1978]

Comes now the plaintiff, through counsel, and moves that the Court issue an Order and Writ of Possession for the following described real estate presently occupied by the defendants:

Commonly known as 736 Highland Avenue, Covington, Kentucky and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:

Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision;

thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots, 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

TO EDDIE THOMPSON, JR. AND PATRICIA THOMPSON, NOTICE:

You and each of you are hereby notified that the undersigned, as attorney for the plaintiff herein, will, on the 26th day of June, 1978, ask the Third Division of the Kenton Circuit Court to grant an Order and Writ of Possession directing that the Sheriff of Kenton County place the plaintiff in possession of the above described real estate.

RICHARD S. NELSON
Attorney for Plaintiff
P.O. Box 1209
11 West Sixth Street
Covington, Kentucky 41012

NOTICE

Notice is hereby given that the above styled motion will be brought on for hearing before the Kenton Circuit Court, Third Division, on Monday, the 26th day of June, 1978 at 3:00 p.m., or as soon thereafter as counsel may be heard.

RICHARD S. NELSON
[CERTIFICATE OMITTED]

App. 48

33a

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., ET AL.,

Defendants.

WRIT AND ORDER OF POSSESSION

[Filed July 7, 1978]

TO THE SHERIFF OF KENTON COUNTY:

You are, in the name of the Commonwealth of Kentucky, commanded that you put the plaintiff, The Peoples Liberty Bank and Trust Company, of Covington, Kentucky, in possession of the following premises; forthwith and make return to this Court within (10) days verifying compliance with this Order:

Commonly known as 736 Highland Avenue, Covington, Kentucky, and being more particularly described as follows:

Known as Lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows; Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the east line of the alley 6 feet in width the center line of

which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

DATED at Covington, Kenton County, Kentucky, this 12 day of April, 1978.

/s/ D. J. GOODENOUGH
JUDGE

A TRUE COPY: ATTEST

ED F. SCHROEDER-CLERK

BY /s/ E. NIENABER D.C.

App. 50

35a

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK
AND TRUST COMPANY,

Plaintiff,

vs.

EDDIE THOMPSON, JR., et al,

Defendants.

AFFIDAVIT

[Filed July 12, 1978]

Comes now Richard S. Nelson, attorney for the plaintiff herein, and being first duly cautioned and sworn, states as follows:

1. The Writ and Order of Possession issued in this matter pursuant to Order of the Court dated July 6, 1978 was not immediately signed by the Judge of the Kenton Circuit Court at the specific request of counsel for the plaintiff. The reason for this was to allow the Kenton County Sheriff to make necessary arrangements to execute the Writ and Order of Possession and since the Sheriff is under a ten (10) day deadline by statutes, counsel desired not to obtain the signature of the Judge and file the Writ and Order of Possession until July 12, 1978.

2. The date of the Writ and Order of Possession as

shown thereon at the bottom of April 12, 1978 is in fact July 12, 1978 and the month of "April" was inadvertently inserted by counsel for the plaintiff.

The filing date in the Office of the Kenton Circuit Court also was July 12, 1978 and the Writ and Order of Possession was delivered to the Kenton County Sheriff on or about that date for execution.

The foregoing and within Affidavit is made by counsel in order to establish the true and accurate sequence of events and to correct the obvious chronological dates inaccurately and inadvertently contained in the Writ and Order of Possession at the end thereof and on its time stamp.

RICHARD S. NELSON
Attorney for Plaintiff

/s/ LINDA S. TYE
NOTARY PUBLIC
State of Kentucky at Large

Subscribed and sworn to before me, a Notary Public,
by Richard S. Nelson, this 19th day of July, 1978.

[CERTIFICATE OMITTED]

App. 52

37a

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 31053

THE PEOPLES LIBERTY BANK,

Plaintiff.

vs.

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Defendants.

ORDER

[Filed June 17, 1981]

The instant action is before the court on defendants' Motion to Set Aside (a) Mortgage Foreclosure Sale, (b) Order Confirming Sale (c) Cancel Deeds Made Pursuant thereto; (d) Writs of Possession Entered Thereafter (signed in October 1977 and April 1978, respectively).

Defendants Patricia and Eddie Thompson, Jr. present pro se; Mr. Richard Nelson, attorney for Peoples Liberty Bank, present.

The Court having reviewed the authorities cited by defendants and otherwise being sufficiently advised:

IT IS ORDERED AND ADJUDGED that the Motion/s of Defendants is hereby denied because these matters have

App. 53

38a

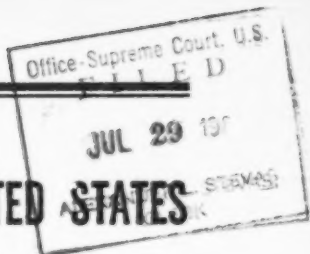
been previously ruled on by the Court and denied, and the Court does not have jurisdiction of the matter.

This is the 17 day of June 1981.

JUDGE KENTON CIRCUIT COURT

/s/ D. J. GOODENOUGH
THIRD DIVISION

[CERTIFICATE OMITTED]



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

Petitioners-Plaintiffs,

vs.

78-57 81-5784

RICHARD NELSON,

and

79-40 81-5785

PEOPLES LIBERTY BANK; CARSON FURNITURE;
GEORGE WERMELING; RALPH HAILE; JUDY
GUFFEY; RICHARD NELSON; RICHARD SLUKICH;
THOMAS A. EPPERSON; JAMES TUCKER; TODD
A. FINAN; JAMES LILES; BERNARD SMITH;
HENRY WARDEN; UNNAMED POLICE OFFICERS;
UNNAMED EMPLOYEES OF CARSON FURNITURE,

and

78-70 81-5786

RICHARD SLUKICH; PEOPLES LIBERTY BANK;
RALPH HAILE; RICHARD NELSON,

Respondents-Defendants.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

STEPHEN T. McMURTRY
OFFICE OF THE CITY
SOLICITOR

Room 906 City-County Building
Third and Court Streets
Covington, Kentucky 41011

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No. 82-2122

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

Petitioners-Plaintiffs,

vs.

78-57 81-5784

RICHARD NELSON,

and

79-40 81-5785

PEOPLES LIBERTY BANK; CARSON FURNITURE;
GEORGE WERMELING; RALPH HAILE; JUDY
GUFFEY; RICHARD NELSON; RICHARD SLUKICH;
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STATEMENT OF THE CASE

This statement of the facts of the case pertains to three police officers of the City of Covington, Epperson, Finan, and Tucker, who were sued by Thompson for excessive use of force in making an arrest, and to George Wermeling, former Mayor of the City of Covington, and Henry Warden, a Covington police officer, who were alleged to have conspired against Thompsons to deprive them of real and personal property without due process of law.

The case against Epperson, Finan, and Tucker was tried by a jury, which returned a verdict in their favor. The case against Wermeling and Warden was dismissed by the granting of a Summary Judgment in their favor after the Thompsons failed to present any facts to support the conclusory allegations of the pleadings.

The petitioners statement of the facts of the case is an example of what the attorneys, the trial court, and the appellate court have had to face from the inception of this case, a mixture of fact and fiction, truth and illusion, evidence and allegation. The Sixth Circuit Court of Appeals defined the issues as follows:

- (a) the verdict against Thompson in the jury trial against Finan, Epperson, and Tucker was not supported by the evidence;
- (b) the bank officicers should have been joined with the police officers in the jury trial;
- (c) the trial court failed to instruct the jury properly;
- (d) opposing counsel made impermissible statements to the jury; and,
- (e) the summary judgment in favor of Wermeling and Finan was unprovidently granted.

The Sixth Circuit Court of Appeals found no merit in these arguments.

ISSUES

The Thompsons have enumerated two issues or "reasons for granting the writ" which are irrelevant as written and then have catalogued many alleged issues which should reduce to those issues stated by the Sixth Circuit Court of Appeals, "Exhibit A, *Petition for Writ*", which are:

- (a) the verdict against Epperson, Finan, and Tucker was not supported by the evidence;
- (b) the bank officials should have been joined with the police officers, Finan, Tucker and Epperson;
- (c) the trial court failed to properly instruct the jury;
- (d) opposing counsel made impermissible statements.

ARGUMENT

Petitioners request that the Supreme Court review and reassess the facts of the case upon which the Sixth Circuit based its decision. They claim the decision to be unacceptable and such a departure from the usual course of judicial proceedings that the Supreme Court should exercise its powers of supervision.

The Sixth Circuit Court of Appeals rejected the Thompsons' arguments pertaining to the use of excessive force as being without merit. Exhibit A, page 2a, *Petition for a Writ*. The trial judge rejected the motion of Thompson for a judgment notwithstanding the verdict with this comment,

"It is clear to this Court that the evidence overwhelmingly supported the verdict of the jury." Exhibit J, page 17a, *Petition for a Writ*.

Thompson's argument consists of conclusory allegations and re-argument of his case tried before the jury. It pre-

sents no issues worthy of consideration by this court. Furthermore it verges on libel, contains many allegations of fact not found in the evidence, and may even be perjurious. For example, Eddie Thompson, Jr. in an affidavit included in his Petition for a Writ of Certiorari, pages numbered Roman Numerals X and XI, makes several factual claims unsupported by the evidence and, to this writer's knowledge, untrue.

A jury has returned a verdict that Officers Finan, Tucker, and Epperson did not use excessive force in arresting a drunken Eddie Thompson. Thompson's efforts before the Supreme Court of the United States to re-argue the case on the merits should fail. He presents no legal reasons why the jury verdict should be overturned.

The District Court was not in error in granting George Wermeling and Henry Warden summary judgments dismissing all of the Thompsons' claims against them. The Thompsons wove a fantastic tale of conspiracy involving Northern Kentucky banks, police officers, judges and lawyers to deprive them of property without due process of law. In response to the defendants' motions for summary judgment, the Thompsons were unable to present any specific facts to support these claims of conspiracy except the conclusory allegations of their pleadings. Relying on *R. E. Cruise, Incorporated v. Bruggeman*, 508 F.2d 415 (6th Cir. 1975) and Rule 56 (c), Federal Rules of Civil Procedure, the Sixth Circuit Court of Appeals correctly dismissed the Complaint. (Petition for a Writ, Exhibit A, pages 1a-3a).

CONCLUSION

The Petition and the Record do not show that there are any reasons for this Court to issue a Writ of Certiorari.

Respectfully submitted,

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No. 82-2122

Office Supreme Court, U.S.

FILED

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**BRIEF OF THE RESPONDENTS, RICHARD
SLUKICH, CARSON FURNITURE AND UNNAMED
EMPLOYEES OF CARSON FURNITURE IN
OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI**

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ARGUMENT

May it please the Court:

Please end this Travesty.

Respectfully Submitted

.....
STEPHEN D. WOLNITZEK

.....
WILBUR ZEVELY

CERTIFICATE OF SERVICE

I hereby certify that 3 copies of the foregoing Brief have been served by the United States mail this day of July, 1983 upon: Mr. Eddie Thompson, Jr., P.O. Box 1221, Covington, Kentucky, 41011; Mrs. Patricia Thompson, P.O. Box 1221, Covington, Kentucky, 41011; Mr. Rodney S. Bryson, 600 First National Building, Sixth and Madison, Covington, Kentucky, 41011; Mr. Richard Nelson, 11 W. Sixth Street, Covington, Kentucky, 41011; Mr. Stephen McMurtry, Room 906, City-County Building, Covington, Kentucky 41011.

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